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11 P R O C E E D I N G S

12 (Jury out.)

13 COURT SECURITY OFFICER: All rise.

14 THE COURT: Be seated, please.

15 Good morning, counsel.

16 Before we get into the formal charge conference,
17 yesterday, after the close of the evidence, the Court took
18 up and heard arguments from both Plaintiff and Defendants
19 presented under Rule 50(a) of the Federal Rules of Civil
20 Procedure. During of the course of that, I asked each party
21 to state the theories and bases for their respective
22 motions. At that time, the Defendant moved for judgment
23 under Rule 50(a) regarding non-infringement.

24 I do not recall that the Plaintiff formally
25 indicated that they were seeking judgment as a matter of law
of infringement. But during the argument, counsel for

1 Plaintiff said KAIST IP US also cross moves for a judgment
2 as a matter of law that no reasonable jury could find that
3 the Defendants have not infringed the asserted claims of the
4 '055 patent.

5 That was presented for the first time in argument.
6 I did not expressly rule on the assertion of infringement as
7 a matter of law by the Plaintiffs. So to make sure the
8 record is absolutely complete, to the extent Plaintiffs
9 argued for JMOL under Rule 50(a) regarding infringement,
10 that motion is denied.

11 All right. Are the parties prepared to read into
12 the record the items used during yesterday's trial from the
13 list of pre-admitted exhibits so that we can keep that clear
14 at this point.

15 MS. SMITH: Yes, Your Honor.

16 MR. BUNT: Mr. Rodgers is going to read --

17 THE COURT: That's fine.

18 MR. BUNT: -- for the Plaintiff.

19 THE COURT: If you'll approach the podium,
20 Mr. Rodgers. You and Ms. Smith may make that joint offer at
21 this time.

22 MR. RODGERS: Thank you, Your Honor.

23 Yesterday, June 14th, Plaintiffs offered Exhibit
24 PX-0008, PX-0044, PX-0139, PX-0362, PX-0384, PX-0413,
25 PX-0596, PX-0622, PX-0625, PX-0627, PX-0670, PX-0672,

1 PX-0673, PX-0708, PX-0729, PX-1290, PX-1291, PX-1294,
2 PX-1299, PX-1306, PX-1328, PX-1349, PX-2117, and IX-004.

3 THE COURT: All right. Is there objection to that
4 rendition from the Defendants?

5 MS. SMITH: No, Your Honor.

6 THE COURT: Do Defendants have a similar rendition
7 to offer into the record?

8 MS. SMITH: Yes, Your Honor.

9 THE COURT: Please proceed.

10 MS. SMITH: Defendants offered DX-134, DX-272,
11 DX-275, DX-279, DX-316, DX-329, DX-513, DX-523, and DX-524.

12 THE COURT: Is there objection from Plaintiff?

13 MR. RODGERS: No there's not, Your Honor.

14 THE COURT: All right. Thank you, counsel.

15 We'll now proceed to conduct a formal charge
16 conference on the record. I'll note for the record that
17 after the close of the evidence yesterday, the Court held an
18 informal change conference in chambers with counsel for all
19 the parties. I didn't time it, but it looked like it was
20 approximately two hours in duration. The Court went through
21 the then most current version of the final jury instructions
22 and verdict form and had input and discussion with counsel
23 in a free-flowing and open manner.

24 The Court has considered all the input from the
25 parties and has generated, based thereon, what it believes

1 to be an appropriate and final jury instruction, together
2 with the verdict form.

3 That was delivered overnight to the parties.
4 They've had an adequate opportunity to review it and
5 consider it. And the Court will now conduct a formal charge
6 conference on the record allowing any party to lodge such
7 objections as they believe are supported by the law.

8 And in this regard, I'm going to request that a
9 single spokesman for Plaintiff and a single spokesman for
10 Defendants approach the podium together. My intention is to
11 go through these documents on a page-by-page basis. And at
12 any point in that review, if either side believes a matter
13 has been included, which is improper, or has been omitted
14 which should have been included, then the Court invites them
15 to offer such objections at that point as they believe the
16 best interest of their clients require.

17 So we'll -- we'll proceed with the formal charge
18 conference with Mr. Choung for Plaintiff and Mr. Kinnaird
19 for Defendants.

20 We'll begin with the final jury instructions. I'll
21 begin with Page 1 of that document. Are there objections to
22 anything on Page 1 of the final jury instructions from
23 either Plaintiff or Defendants?

24 MR. CHOUNG: None from the Plaintiffs, Your Honor.

25 MR. KINNAIRD: None from the Defendants, Your

1 Honor.

2 THE COURT: All right. Turning then to Page 2, are
3 there objections from either party?

4 MR. CHOUNG: None from Plaintiffs, Your Honor.

5 MR. KINNAIRD: None from Defense -- Defendants,
6 Your Honor, assuming we'll have an opportunity to object to
7 the verdict form itself.

8 THE COURT: We will -- we will review the verdict
9 form after we review the final jury instructions.

10 MR. KINNAIRD: Thank you.

11 THE COURT: Based on those comments, we'll turn to
12 Page 3, are there objections to anything on Page 3 of the
13 final jury instructions from either party?

14 MR. CHOUNG: None from the Plaintiffs, Your Honor.

15 MR. KINNAIRD: None from the Defendants, Your
16 Honor.

17 THE COURT: Turning then to Page 4, are there
18 objections from either party?

19 MR. CHOUNG: None from the Plaintiffs, Your Honor.

20 MR. KINNAIRD: None from Defendants, Your Honor.

21 THE COURT: All right. Page 5, are there
22 objections?

23 MR. CHOUNG: None from Plaintiffs, Your Honor.

24 MR. KINNAIRD: Your Honor, we would object to the
25 reference to the Samsung Defendants in which there are four

1 collectively as Samsung or the Samsung Defendants and the
2 GlobalFoundries Defendants to be collectively referred to as
3 GlobalFoundries to the extent that also requires the jury to
4 make determinations on that collective basis rather than on
5 an individual basis.

6 THE COURT: All right. The Court notes that
7 beginning with its preliminary jury instruction, the Court
8 has indicated throughout the trial that the Defendants would
9 be identified and referred to on that same basis. And no
10 one for Defendants has raised an objection prior to this
11 point, but nonetheless, having heard the objection of
12 Defendants in that regard, as called out on Page 5 of the
13 final jury instructions, that objection is overruled.

14 MR. KINNAIRD: Thank you, Your Honor.

15 THE COURT: We'll turn next to Page 6 of the final
16 jury instructions. Is there any objections?

17 MR. CHOUNG: None from Plaintiffs, Your Honor.

18 MR. KINNAIRD: None from Defendants, Your Honor.

19 THE COURT: Page 7, are there objections?

20 MR. CHOUNG: None from Plaintiffs, Your Honor.

21 MR. KINNAIRD: None from the Defendants, Your
22 Honor.

23 THE COURT: Page 8, are there objections?

24 MR. CHOUNG: None from Plaintiffs, Your Honor.

25 MR. KINNAIRD: None from Defendants, Your Honor.

1 THE COURT: Page 9, are there objections?

2 MR. CHOUNG: None from Plaintiffs, Your Honor.

3 MR. KINNAIRD: Your Honor, Defendants would object
4 that the instruction on Page 9, "comprising" fails to inform
5 the jury that the "comprising" term does not permit an
6 additional recited element to be added to the device, it
7 would cause another limitation of the claim not to be met.

8 THE COURT: That objection is overruled. Anything
9 further on Page 9?

10 If not, we'll turn to Page 10, is there --

11 MR. KINNAIRD: No, Your Honor.

12 THE COURT: Is there objection to anything on Page
13 10 from either party?

14 MR. CHOUNG: Not from Plaintiffs, Your Honor.

15 THE COURT: I will note, counsel, on Page 10, there
16 is a correction that's not so much of a substantive nature
17 as it is a matter of semantics and proper verbiage. But in
18 the middle of the page, the paragraph beginning "in
19 determining infringement," I'm going to reword that first
20 sentence to read as follows: In determining infringement,
21 comma, once the patent is issued, comma, the owner of a
22 patent has the right to stop others from making, using,
23 comma, selling, or offering for sale the patented invention
24 throughout the United States or from importing it into the
25 United States for the life of the patent.

1 That will make that first sentence consistent with
2 the other similar insertions of that same matter throughout
3 the rest of the instructions.

4 With that clarification, does either party have
5 objections to either that change or anything else on Page 10
6 of the final jury instructions?

7 MR. CHOUNG: No, Your Honor. None from Plaintiffs.

8 MR. KINNAIRD: No objection, Your Honor, on Page
9 10.

10 THE COURT: Turning then to Page 11, are there
11 objections?

12 MR. CHOUNG: None from Plaintiffs, Your Honor.

13 MR. KINNAIRD: Your Honor, may I ask a
14 clarification? When the second paragraph says "you must
15 make separate determinations based on the evidence for each
16 of the Samsung Defendants and GlobalFoundries," is it the
17 Court's intent to say that means for each one of those
18 groups as opposed to each of the individual Defendants?

19 THE COURT: Counsel, I believe that's clear in that
20 I've identified the four Samsung Defendants as the Samsung
21 Defendants, and the two GlobalFoundries Defendants as the
22 GlobalFoundries Defendants elsewhere. So this follows the
23 same grouping of Defendants as we've used throughout the
24 trial beginning with the preliminary instructions up to this
25 point.

1 So it's not to change it to individual Defendants
2 on all seven separate corporate structures, but it is to
3 continue the treatment of the four Samsung corporations as
4 collectively the Samsung Defendants and the two
5 GlobalFoundries corporate entities collectively as the
6 GlobalFoundries entities, and, of course, Qualcomm stands
7 alone.

8 MR. KINNAIRD: Thank you for --

9 THE COURT: Does that answer your question.

10 MR. KINNAIRD: Yes, it does, Your Honor. Thank you
11 for the clarification.

12 In that case, Defendants do object to these
13 instructions that the jury should make determinations with
14 regard to the Samsung and GlobalFoundries Defendants
15 collectively rather than individually for each of the four
16 Samsung Defendants or two GlobalFoundries Defendants.
17 Patent infringement is a personal tort. Section 271(a)
18 provides that except as otherwise provided in this title,
19 whoever without authority makes, uses, offers to sell, or
20 sells any patented invention within the United States or
21 imports into the United States any patent invention during
22 the term of the patent, therefore, infringes the patent.
23 Each Defendant can be liable only for its own act.

24 Plaintiff has not raised any claim of or sought any
25 instruction regarding inducement, agency, control, alter

1 ego, joint infringement, or any other basis for either
2 disregarding corporate forum or imposing joint and several
3 liability and corporate lia -- affiliates for the acts of
4 another, nor would the evidence support any such
5 instruction.

6 Thank you.

7 THE COURT: Well, you raised this earlier in the
8 formal charge conference. I overruled that objection there.
9 And consistent with it, I'll overrule the -- that same
10 objection here.

11 If you -- if you feel compelled to repeat that
12 objection throughout the remainder of the process, you're
13 free to, but the Court's rulings will be consistent.

14 MR. KINNAIRD: Thank you, Your Honor. I'll just
15 take it as a standing objection.

16 THE COURT: All right. Unless there's something
17 further, we'll turn to Page 12, and I'll ask if there's
18 objection from either party to anything on Page 12?

19 MR. KINNAIRD: Yes, Your Honor. Defendants would
20 object to the inclusion of a Doctrine of Equivalents
21 instruction in the case because no Doctrine of Equivalents
22 position was timely and properly asserted by Plaintiff.

23 THE COURT: That's overruled.

24 Anything from Plaintiff on Page 12?

25 MR. CHOUNG: None, Your Honor.

1 THE COURT: On Page 12, counsel, there are two
2 relatively minor typographical errors to correct. On the
3 paragraph near the top of the page that begins, "a patent
4 can be directly infringed," on the second line of that
5 sentence, "the patent and without the infringer knowing that
6 was it is," not what it "was" doing. So the word "was"
7 before "doing," I will change from "was" to "is."

8 And then two paragraphs below that, "under the
9 Doctrine of Equivalents, if a person makes, uses, sells,
10 offers to sell within the United States" was left out
11 inadvertently. And I'm going to add after the word
12 "within," "the United States or imports into the United
13 States," which follows. Is that clear?

14 MR. CHOUNG: Yes, Your Honor.

15 THE COURT: Any objection to those corrections?

16 MR. CHOUNG: None from Plaintiffs.

17 MR. KINNAIRD: None from Defendants, Your Honor.

18 THE COURT: All right. Anything further on Page
19 12?

20 MR. CHOUNG: No.

21 THE COURT: If not, we'll turn to Page 13. Are
22 there objections from either party with regard to any matter
23 on Page 13 of the final jury instructions?

24 MR. CHOUNG: None from Plaintiffs, Your Honor.

25 MR. KINNAIRD: Your Honor, Defendants would object

1 to the failure of the willfulness instruction to instruct
2 that knowledge -- explicitly that knowledge of the patent at
3 the time of infringement is not enough to prove willfulness
4 and to consider the totality of the circumstances.

5 We would -- Defendants would also object to the
6 inclusion of an instruction on the Patent Office
7 and Trial -- Patent Trial and Appeals Boards proceedings
8 which is unwarranted and will confuse the jury.
9 Instructions should have been limited to instructing the
10 jury that it finds -- that if it finds that new prior art
11 has been presented that was not before the Patent Office, it
12 should consider that the PTO had no opportunity to evaluate
13 the prior art before granting the party (sic).

14 Defendants object to the instruction that the jury
15 may consider the decision of the Patent Office conducting or
16 not conducting a review proceeding after a patent has been
17 issued based on the prior art. The PTAB proceedings
18 mentioned are restricted to the grounds of institution, and
19 thus a reference that's raised for obviousness will not
20 allow consideration of that reference for anticipation. And
21 if a reference cannot be considered for anticipation, the
22 institution of a PTAB proceeding will not bring the
23 reference before the PTO in the relevant sense.

24 The instructions are improper because it does not
25 inform the jury of that limitation. One of the key prior

1 art -- one of the key references was not before the PTAB for
2 anticipation.

3 THE COURT: All right. That objection is
4 overruled.

5 If there's not anything further on that page, we'll turn
6 from Page 13 to Page 14. Are there objections to anything
7 on Page 14?

8 MR. CHOUNG: Not from Plaintiffs, Your Honor.

9 MR. KINNAIRD: None from Defendants, Your Honor.

10 THE COURT: All right. Page 15 is next. Are there
11 objections from either party?

12 MR. CHOUNG: None from Plaintiffs, Your Honor.

13 MR. KINNAIRD: None from Defendants, Your Honor.

14 THE COURT: Turning then to Page 16, are there
15 objections from either party?

16 MR. KINNAIRD: Your Honor, the Defendants object to
17 failure to instruct the jury on the reasonable expectation
18 of success requirement of obviousness and to instruct them
19 that absolute predictability is not required.

20 THE COURT: That objection is overruled.

21 Anything further?

22 MR. KINNAIRD: No, Your Honor.

23 THE COURT: All right. We'll turn to Page 17. Are
24 there objections there from either party?

25 I do have, counsel, for your information one other

1 stylistic correction on the very top line of Page 17. It
2 presently reads: Publication or patent will not be an
3 anticipation unless. I'm going to reword that to say:
4 Publication or patent will not anticipate unless. That's
5 basically a stylistic change that I think will be clearer
6 for the jury.

7 MR. KINNAIRD: No objection from the Defendants,
8 Your Honor.

9 MR. CHOUNG: No objections, Your Honor.

10 THE COURT: Are there any other objections to
11 anything on Page 17?

12 MR. CHOUNG: None, Your Honor.

13 MR. KINNAIRD: None from the Defendants, Your
14 Honor.

15 THE COURT: Okay. Then I'll turn to Page 18. Are
16 there any objections here from either party?

17 MR. CHOUNG: None from Plaintiffs, Your Honor.

18 MR. KINNAIRD: None from Defendants, Your Honor.

19 THE COURT: All right. Turning then to Page 19,
20 are there any objections?

21 MR. CHOUNG: None from Plaintiffs, Your Honor.

22 MR. KINNAIRD: None from the Defendants, Your
23 Honor.

24 THE COURT: Turning then to Page 20, are there any
25 objections?

1 MR. CHOUNG: None from Plaintiffs, Your Honor.

2 MR. KINNAIRD: None from the Defendants, Your
3 Honor.

4 THE COURT: All right. On Page 20, counsel, toward
5 the bottom of the page, the paragraph that begins "if you
6 find that any." On the second line of that paragraph, we
7 personally say "the Qualcomm has infringed." I'm going to
8 omit the article "the" so it will simply say on that line
9 "Qualcomm has infringed." Again, a stylistic change.
10 Any objection there?

11 MR. CHOUNG: None, Your Honor.

12 MR. KINNAIRD: No, Your Honor.

13 THE COURT: Then we'll turn to Page 21. Are there
14 objections there from either party?

15 MR. CHOUNG: None, Your Honor.

16 THE COURT: Anything on Page 21 from Defendants?

17 MR. KINNAIRD: No. No, Your Honor.

18 THE COURT: Turning then to Page 22, are there
19 objections there from either party?

20 MR. CHOUNG: None, Your Honor.

21 MR. KINNAIRD: Your Honor, Defendants would object
22 that we believe an instruction is necessary that the parties
23 to the hypothetical negotiation cannot be presumed to have
24 future knowledge -- or knowledge of the future and that they
25 also -- the royalty may want be based on an after-the-fact

1 calculation of sales, profits, or cost savings.

2 THE COURT: All right. That objection is
3 overruled.

4 Anything further on Page 22?

5 If not, we'll turn to Page 23, are there objections
6 on Page 23 from either party?

7 MR. CHOUNG: None from Plaintiffs, Your Honor.

8 MR. KINNAIRD: Your Honor, we -- Defendants would
9 object to the failure to instruct the jury that the smallest
10 salable unit is the proper starting point for apportioning
11 value to the patented feature -- patented features.

12 THE COURT: All right. That objection is
13 overruled.

14 Also, counsel, I'll note that beginning at the --
15 toward the bottom of Page 23, there's a recitation of all
16 the various Georgia-Pacific factors, and I'd like to confirm
17 on the record that neither party objects to the Court
18 charging this jury on all the Georgia-Pacific factors.

19 Does Plaintiff have any objection to that?

20 MR. CHOUNG: No, Your Honor.

21 THE COURT: Does Defendant?

22 MR. KINNAIRD: No, Your Honor.

23 THE COURT: Okay. Then we'll turn to Page 24,
24 again, these are Georgia-Pacific factors. Are there any
25 objections to anything on Page 24?

1 MR. CHOUNG: No, Your Honor.

2 MR. KINNAIRD: No, Your Honor.

3 THE COURT: Turning then to Page 25, are there
4 objections here from either party?

5 MR. KINNAIRD: Your Honor, Defendants would object
6 to the instruction that a reasonable royalty can exceed the
7 profits expected by the patentee. The parties to the
8 hypothetical negotiation must negotiate a royalty that is
9 designed to yield the infringer a -- accused infringer a
10 reasonable profit.

11 THE COURT: All right. That objection is
12 overruled.

13 Any other objections on Page 25?

14 MR. CHOUNG: None from Plaintiffs, Your Honor.

15 MR. KINNAIRD: And none from Defendants, Your
16 Honor.

17 THE COURT: All right. Before we move on, counsel,
18 I will note one other stylistic change.

19 On the paragraph that begins "Now, no one of these
20 factors is dispositive," I'm simply going to change that to
21 read, "None of these factors is dispositive."

22 Again, that's a stylistic change I think will be
23 clearer for the jury.

24 Any objection to that change from either party?

25 MR. CHOUNG: No, Your Honor.

1 MR. KINNAIRD: No, Your Honor.

2 THE COURT: Turning then to Page 26 of the final
3 jury instructions, is there objection from either party?

4 MR. KINNAIRD: Your Honor, Defendants would object
5 to the instruction that a patent owner is entitled to
6 protect its patent rights under the U.S. Constitution. And
7 this includes bringing a suit in a United States District
8 Court for money damages for infringement.

9 This is not a correct statement of the law. The
10 constitution simply gives Congress the power to grant
11 inventors exclusive rights in their discoveries. Congress
12 is under no obligation to pass a patent statute unless any
13 right of enforcement is not of constitutional dimension.
14 The constitution says nothing about the entitlement of
15 patent owners to protect their rights. Any such rights are
16 solely a matter of statute.

17 And this paragraph improperly suggests that
18 patentees -- may lead the jury to think that patentees are
19 constitutionally favored, and we believe that it should be
20 deleted.

21 THE COURT: All right. In response to that
22 objection, the sentence on the lower third of 26, which
23 currently reads, "A patent owner is entitled to protect his
24 rights -- its patent rights under the United States
25 Constitution," I will grant the objection to this extent, I

1 will modify that sentence so that it now reads, "A patent
2 owner is entitled to protect his rights under the laws of
3 the United States."

4 MR. KINNAIRD: No objection to that, Your Honor.

5 THE COURT: Anything else on Page 26?

6 If not, we'll move to Page 27, are there objections
7 from either party to anything on Page 27 of the final jury
8 instructions?

9 MR. KINNAIRD: No, Your Honor. I just would ask,
10 the Defendants would like to renew their objections to the
11 claim construction in the jury -- in the juror notebook that
12 the jury's instructed to use and would ask the Court's leave
13 to rely on the reasons given in the proposed final jury
14 instructions rather than to read all of those orders in open
15 court, although I'm prepared to do so.

16 THE COURT: Is your objection, counsel, to the
17 Court referencing the claim construction definitions that
18 are included in the juror notebooks as opposed to expressly
19 including them and reading them in the final jury
20 instructions?

21 MR. KINNAIRD: No, Your Honor. I'm sorry to
22 clarify, we were just renewing our objection to the
23 substance of the claim constructions to which we objected
24 and the Court overruled previously.

25 THE COURT: Well, that objection is overruled.

1 MR. KINNAIRD: Thank you, Your Honor.

2 THE COURT: Is there any objection on Page 27 from
3 Plaintiff?

4 MR. CHOUNG: Your Honor, then from Plaintiffs in
5 that regard, we'd like to renew our objections to the ruling
6 on the claim construction for "directly formed on" to
7 preserve the record.

8 THE COURT: All right. Well, that objection,
9 likewise, is overruled.

10 Is there anything on Page 27 Plaintiff cares to
11 object to?

12 MR. CHOUNG: No, Your Honor.

13 THE COURT: That appears to be the last page of the
14 final jury instructions.

15 We'll next move to the verdict form. We'll pursue
16 this or take this up in the same manner. We'll begin with
17 Page 1 of the verdict form.

18 Is there objection to anything from either party to
19 Page 1 of the verdict form?

20 MR. KINNAIRD: Your Honor, the Defendants do object
21 that the same objection we had to the jury instruction that
22 the verdict form improperly forces the jury to determine
23 infringement, willfulness, and damages for the Samsung
24 Defendants collectively and for the two GlobalFoundries
25 Defendants collectively rather than for each Defendant

1 separately. This amounts to directing a verdict if
2 infringement is found for any one --

3 THE COURT: You've given me your reasons, counsel.
4 Same ruling, those are overruled. Those -- that objection
5 is overruled.

6 MR. KINNAIRD: Thank you.

7 THE COURT: Anything from Plaintiff on Page 1?

8 MR. CHOUNG: No, Your Honor.

9 THE COURT: Turning then to Page 2 of the verdict
10 form, is there any objection from either party?

11 MR. CHOUNG: No, Your Honor.

12 MR. KINNAIRD: No, Your Honor.

13 THE COURT: Turning to Page 3 where Question 1 is
14 located, is there objection from either party?

15 MR. CHOUNG: No, Your Honor.

16 MR. KINNAIRD: No, Your Honor.

17 THE COURT: Turning to Page 4 where Question 2 is
18 located, is there objection from either party?

19 MR. CHOUNG: No, Your Honor.

20 MR. KINNAIRD: No, Your Honor.

21 THE COURT: Turning to Page 5, is there objection
22 from either party?

23 MR. CHOUNG: No, Your Honor.

24 MR. KINNAIRD: No, Your Honor.

25 THE COURT: Turning then to Page 6 where Question 3

1 is located, is there objection from either party?

2 MR. CHOUNG: No, Your Honor.

3 MR. KINNAIRD: No, Your Honor, other than
4 previously stated.

5 THE COURT: Turning then to Page 7, is there
6 objection from either party?

7 MR. CHOUNG: No, Your Honor.

8 MR. KINNAIRD: No, Your Honor.

9 THE COURT: Turning then to Page 8 where Question 4
10 is located, is there objection from either party?

11 MR. CHOUNG: Your Honor, from Plaintiffs we renew
12 our objection on the lump -- paid-up lump sum as an option.

13 THE COURT: That's overruled.

14 Is there any objection from Defendants on Page 8?

15 MR. KINNAIRD: Your Honor, the only objection would
16 be that we think it to be parallel to the jury instructions,
17 it should say "fully paid-up lump sum" or "paid-up lump
18 sum," one or the other.

19 THE COURT: That's overruled.

20 Anything else?

21 MR. CHOUNG: And also, Your Honor, just to clarify
22 on the damages portion of this, to any extent that the
23 verdict is limited to the 14-nanometer devices per the
24 parties' stipulation.

25 THE COURT: Say that again, counsel.

1 MR. CHOUNG: That the damages verdict is limited to
2 the 14-nanometer devices per the parties' stipulation.

3 THE COURT: Are you suggesting that I add language
4 to Page 4?

5 MR. CHOUNG: No, Your Honor.

6 THE COURT: To Question 4?

7 MR. CHOUNG: I just wanted to put it on the record.

8 THE COURT: Okay. To the extent that's an
9 objection, it's overruled. To the extent it's a statement,
10 it's noted.

11 We'll move then to Page 9 which is the final page
12 of the verdict form, is there objection there from either
13 party?

14 MR. CHOUNG: No, Your Honor.

15 MR. KINNAIRD: No, Your Honor.

16 THE COURT: All right. That completes the formal
17 charge conference, counsel. I'll make these noted changes
18 that resulted from the formal charge conference.

19 It's my intention to prepare eight final hard copy
20 versions of the final jury instructions and to send those
21 eight copies back with the jury when they retire to
22 deliberate. And I will consequently tell them that they
23 will have that at the beginning of these instructions so
24 they will be free to listen rather than to feel compelled to
25 take copious notes.

1 It will take me some small amount of time to do
2 that, but once that's done, I intend to return to the bench,
3 bring in the jury, and proceed with the final jury
4 instructions, hear argument -- closing argument from
5 counsel, and then direct the jury to retire and deliberate
6 on its verdict.

7 I mentioned in chambers to counsel earlier, but I
8 think it's worthy of repeating again. The Court considers
9 its final jury instructions and counsel's closing arguments
10 to be the most serious part of an inherently serious
11 process.

12 Consequently, to those in the gallery, we are more
13 than welcome to have you here throughout the process. I
14 insist, however, that you be respectful, that you avoid any
15 and all disruptions. I do not want to see people coming and
16 going from the courtroom once I begin the final jury
17 instructions. I do not want to hear whispering. I do not
18 want to see notes or papers passed. I want everyone to be
19 as quiet and as respectful as possible.

20 Please take that into account, and follow those
21 instructions once I begin my final -- final jury
22 instructions to the jury.

23 Are there questions before the Court recesses?

24 MR. SHEASBY: Yes, Your Honor, there are two
25 questions.

1 First, I just received the revised version of their
2 demonstrative, and it's still inaccurate. This SO2 layer --
3 there's no such thing as a second oxide layer. It's a
4 single SO2 layer that wraps all the way around the Fin, and
5 we request the entire Fin be made blue. There's no physical
6 difference between there and there, and that's the only
7 thing that's in the record.

8 THE COURT: Well, that's overruled, Mr. Sheasby.
9 You may argue to the contrary. You may present something
10 else to the contrary, but I'm not going to keep the
11 Defendants from making that argument.

12 MR. SHEASBY: And the second request is I'm going
13 to be using the drawing board during my closing.

14 THE COURT: The easel?

15 MR. SHEASBY: The easel. And with your permission,
16 so we'd -- we'd like to place it -- pre-place it on this
17 side. Let me ask you this way. Is there a particular place
18 you'd like me to stand when I draw with the easel?

19 THE COURT: I have no problem with counsel using
20 the easel during your final argument. It does need to be
21 placed so that it doesn't block the view of opposing
22 counsel. It does need to be placed fairly close to the
23 podium, within a few feet. If you'd like to stand beside
24 the easel while you're making an argument related to what
25 you may be drawing on the easel, that is perfectly fine.

1 You will need to speak up. There will be no
2 amplification there. You have had a tendency to talk softly
3 during the trial. You will need to stay within an arm's
4 length of easel, not roam around the well of the Court. But
5 if you will stay within an arm's length of the easel and if
6 you'll speak up so that you're clearly heard, I have no
7 problem with you speaking from the side of the easel once
8 you've placed it somewhere in the vicinity of the podium
9 where it doesn't block anyone's view.

10 MR. SHEASBY: With your permission, may we
11 pre-place it so it doesn't waste time?

12 THE COURT: Put it where you want, and when I come
13 back out, if I have a problem with it, I'll tell you about
14 it.

15 MR. SHEASBY: Thank you, Your Honor.

16 THE COURT: Do we have any other questions?

17 MR. SHEASBY: No, Your Honor.

18 THE COURT: Anything from Defendants?

19 MR. JACOBS: No, Your Honor.

20 THE COURT: The Court stands in recess.

21 COURT SECURITY OFFICER: All rise.

22 (Recess.)

23 (Jury out.)

24 COURT SECURITY OFFICER: All rise.

25 THE COURT: Be seated, please.

1 Mr. Sheasby, I don't see any problem with the
2 placement of that easel there.

3 Is there any objection from anybody?

4 MR. JACOBS: No objection, Your Honor.

5 THE COURT: Okay. Is there anything else we need
6 to take up before I bring in the jury and begin my final
7 jury instructions?

8 MR. SHEASBY: Nothing from the Plaintiffs, Your
9 Honor.

10 MR. JACOBS: Nothing from the Defendants, Your
11 Honor.

12 THE COURT: All right. Let's bring in the jury,
13 please, Mr. Nance.

14 COURT SECURITY OFFICER: All rise for the jury.
15 (Jury in.)

16 THE COURT: Good morning and welcome back, ladies
17 and gentlemen. Please have a seat.

18 Ladies and gentlemen of the jury, you have now
19 heard the evidence in this case, and I will now instruct you
20 on the law that you must apply. I want each of you to
21 understand that you will each have a copy -- a printed hard
22 copy of these final jury instructions that I'm about to give
23 you, which hopefully means you should be able to pay full
24 attention to my oral instructions and not feel compelled to
25 take notes at this time. You will each have your own hard

1 copy to review when you retire to deliberate.

2 It's your duty to follow the law as I give it to
3 you. On the other hand, ladies and gentlemen, and as I've
4 previously said, you, the jury, are the sole judges of the
5 facts in this case.

6 Do not consider any statement that I have made in
7 the course of the trial or make during these instructions as
8 an indication to you that I have any opinion about the facts
9 in this case.

10 You're about to hear closing arguments from the
11 attorneys. Statements and arguments of the attorneys, let
12 me remind you, are not evidence, and they are not
13 instructions on the law. They're intended only to assist
14 the jury in understanding the evidence and the parties'
15 contentions.

16 A verdict form has been prepared for you. You're
17 to take this verdict form with you to the jury room, and
18 when you've reached a unanimous decision as to the verdict,
19 you're to have your foreperson fill in the blanks in the
20 verdict form to reflect those unanimous decisions, sign it,
21 date, it, and then deliver it to the Court Security Officer.

22 Answer each question in the verdict form from the
23 facts as you find them to be. Do not decide who you think
24 should win the case and then answer the questions to reach
25 that result. Again, ladies and gentlemen, your answers and

1 your verdict must be unanimous.

2 Now, in determining any fact and whether it's been
3 proven in this case, you may, unless otherwise instructed,
4 consider the testimony of all the witnesses, regardless of
5 who may have called them, and you may consider all of the
6 exhibits received and admitted into evidence, regardless of
7 who may have produced them or presented them.

8 You, the jurors, are the sole judges of the
9 credibility of each and every witness and the weight and
10 effect to be given to the evidence in this case.

11 As I've said previously, the attorneys in this case
12 are acting as advocates for their competing parties and
13 their competing claims, and they have a duty to object when
14 they believe evidence is offered that should not be admitted
15 under the rules of the Court.

16 In that case, when the Court has sustained an
17 objection to a question addressed to a witness, you're to
18 disregard the question entirely, and you may draw no
19 inference -- excuse me, inference from its wording or
20 speculated about what the witness would have said if I had
21 permitted them to answer the question. On the other hand,
22 if the objection was overruled, then you're to treat the
23 answer to the question and the question itself just as if no
24 objection had been made; that is, like any other question
25 and answer.

1 Now, at times during of the course of the trial,
2 it's been necessary for the Court to talk with the lawyers
3 here at bench or outside of your hearing by calling a recess
4 while you were in the jury room. This happens sometimes
5 during a trial because there are things that occasionally
6 come up that do not involve the jury. You should not
7 speculate about what was said during these discussions that
8 took place outside of your presence.

9 Now, ladies and gentlemen, there are two types of
10 evidence that you may consider in properly finding the truth
11 as to the facts in this case. One is direct evidence, such
12 as the testimony of an eyewitness. The other is indirect or
13 circumstantial evidence; that is, the proof of a chain of
14 circumstances that indicates the existence or nonexistence
15 of certain other facts.

16 As a general rule, you should know that the law
17 makes no distinction between direct or circumstantial
18 evidence, but simply requires that you, the jury, find the
19 facts based on the evidence presented, both direct and
20 circumstantial.

21 The parties may have stipulated or agreed to some
22 facts in the case. And when the lawyers for both sides
23 stipulate as to the existence of a fact, you must, unless
24 otherwise instructed, accept that stipulation as evidence
25 and regard that fact as proven.

1 Certain testimony in this case has been presented
2 to you through depositions. A deposition is the sworn,
3 recorded answers to questions asked to a witness in advance
4 of the trial. If a witness cannot be physically present to
5 testify in person, then the witness's testimony may be
6 presented under oath in the form of a deposition.

7 As I've told you earlier, before the trial began,
8 attorneys representing all the parties questioned these
9 deposition witnesses under oath. A court reporter was
10 present, and the witness was placed under oath. Remember,
11 deposition testimony is entitled to the same consideration
12 by you, the jury, as testimony given by a witness in person
13 from the witness stand in open court. And accordingly, you
14 should judge the credibility and the importance of the
15 deposition testimony to the best of your ability just as if
16 the witness had testified personally in open court before
17 you.

18 Now, while you should consider only the evidence in
19 this case, ladies and gentlemen, you should understand that
20 you are permitted to draw such reasonable inferences from
21 the testimony and the exhibits as you feel are justified in
22 the light of common experience.

23 In other words, you may make deductions and you may
24 reach conclusions that reason and common sense lead you to
25 draw from the facts that have been established through the

1 testimony and other evidence in this case.

2 However, you should not base your decision on any
3 evidence not presented by the parties in open court during
4 the trial of this case, including your own personal
5 experiences with any particular transistor devices.

6 Now, unless I instruct you otherwise, you may
7 properly determine that the testimony of a single witness is
8 sufficient to prove any fact, even if a greater number of
9 witnesses may have testified to the contrary, if after
10 considering all of the evidence you believe that single
11 witness.

12 When knowledge of a technical subject may be
13 helpful to the jury, a person who has special training and
14 experience in that technical field, we call them an expert
15 witness, is permitted to state his or her opinions on those
16 technical matters to you, the jury.

17 However, ladies and gentlemen, you're not required
18 to accept any of those opinions. As with any other witness,
19 it is solely up to you to decide who you believe and who you
20 don't believe and whether or not you want to rely on their
21 testimony.

22 Now, certain exhibits have been shown to you over
23 the course of the trial which were illustrations. We call
24 these types of exhibits demonstrative exhibits or simply
25 just demonstratives. Demonstratives are a party's

1 description, picture, or model to describe something
2 involved in the trial. If your recollection of the evidence
3 differs from the demonstratives, you should rely on your
4 recollection. Demonstrative exhibits, demonstratives, are
5 sometimes called jury aids, and they are not evidence, but
6 the witness's testimony during the use of a demonstrative is
7 evidence.

8 In any legal action, facts must be proven by a
9 required amount of evidence known as the burden of proof.
10 The burden of proof in this case is on the Plaintiff for
11 some issues, and it's on the Defendants for other issues.

12 There are two burdens of proof that you will apply
13 in this case. They are the preponderance of the evidence
14 and clear and convincing evidence.

15 The Plaintiff in this case, KAIST IP US LLC, which
16 you've heard referred to throughout the trial simply as
17 KAIST, has the burden of proving patent infringement by a
18 preponderance of the evidence. KAIST also has the burden of
19 proving willful patent infringement by a preponderance of
20 the evidence. And KAIST has the burden of proof of proving
21 damages for any patent infringement by a preponderance of
22 the evidence.

23 A preponderance of the evidence means evidence that
24 persuades you that a claim is more probably true than not
25 true. This is sometimes talked about as being the greater

1 weight and degree of credible testimony.

2 Now, the Defendants in this case, Samsung
3 Electronics Company Limited, Samsung Electronics America,
4 Inc., Samsung Semiconductor, Inc., Samsung Austin
5 Semiconductor, LLC, who you've heard referred to
6 collectively through the trial as Samsung or the Samsung
7 Defendants, together with GlobalFoundries, Inc.,
8 GlobalFoundries U.S., Inc., who you've heard referred to
9 collectively through the trial as GlobalFoundries or the
10 GlobalFoundries Defendants, and Qualcomm, Inc., who you've
11 heard referred to through the trial simply as Qualcomm, they
12 have the burden of proving patent invalidity by clear and
13 convincing evidence.

14 Clear and convincing evidence means evidence that
15 produces in your mind an abiding conviction that the truth
16 of the party's factual contentions are highly probable.
17 Although proof to an absolute certainty is not required, the
18 clear and convincing evidence standard requires a greater
19 degree of persuasion than is necessary for the preponderance
20 of the evidence standard.

21 If proof establishes in your mind an abiding
22 conviction in the truth of the matter, then the clear and
23 convincing evidence standard has been met.
24 Now, these standards are different from what you've heard
25 about in criminal proceedings where a fact must be proven

1 beyond a reasonable doubt.

2 On a scale of the various standards of proof, as
3 you move from preponderance of the evidence where proof need
4 be only sufficient to tip the scales in party -- in favor of
5 the party proving fact, to at the other end, beyond a
6 reasonable doubt, where the fact must be proven to a very
7 high degree of certainty, you can think of clear and
8 convincing evidence as being between these two ends of the
9 spectrum or these two different standards.

10 In determining whether any fact has been proven by
11 a preponderance of the evidence or by clear and convincing
12 evidence, you may, unless otherwise instructed, consider the
13 stipulations of the parties, the testimony of all the
14 witnesses, regardless of who called them, and all the
15 exhibits received into evidence, regardless of who produced
16 them.

17 Now, as I did at the beginning of the case, I'm
18 going to give you a summary of each side's contentions, and
19 then I'll provide you with detailed instructions on what
20 each side must prove in order to win on each of its
21 contentions.

22 As I told you previously, this case concerns one
23 United States patent, and that is, patent -- U.S. Patent No.
24 6,885,055, which you've consistently heard referred to
25 throughout the trial as the '055 patent. And I'll refer to

1 this as the patent-in-suit sometimes.

2 And you've also heard it referred to as the
3 asserted patent. All of those references are to the '055
4 patent.

5 The Plaintiff in this case, KAIST, seeks money
6 damages from the Defendants for allegedly infringing the
7 patent-in-suit -- that is, the '055 patent -- by making,
8 using, selling, and/or offering for sale in the United
9 States its 14-nanometer bulk FinFET transistor devices on
10 semiconductor wafers, chips containing those transistor
11 devices, and products containing those chips.

12 KAIST contends that the Defendants' accused
13 products infringe the following claims of the '055 patent:
14 Claim 1, Claim 2, Claim 3, Claim 4, Claim 5, Claim 6, Claim
15 11, Claim 12, Claim 13, Claim 15, Claim 16, and Claim 17.
16 All of these claims are sometimes referred to collectively
17 as the asserted claims.

18 KAIST has alleged that the accused products
19 infringe the asserted claims either literally or through the
20 Doctrine of Equivalents.

21 KAIST also alleges that Samsung, GlobalFoundries,
22 and Qualcomm's infringement has been -- is -- has been and
23 is willful. KAIST seeks a reasonable royalty from the
24 Defendants for the alleged infringement.

25 The Defendants deny that their 14-nanometer bulk

1 FinFET transistor devices infringe the asserted claims of
2 the '055 patent.

3 Defendants further deny KAIST's allegations that
4 they willfully infringed any claim of the '055 patent.

5 Defendants also contend that the asserted claims
6 are anticipated by or obvious in view of prior art that
7 existed before KAIST's alleged inventions, and, therefore,
8 that the '055 patent's asserted claims are invalid.

9 Now, ladies and gentlemen, invalidity is a defense
10 to infringement. Defendants deny that they owe KAIST any
11 damages in this case.

12 Invalidity and infringement are separate and
13 distinct issues. However, your job is to decide whether the
14 asserted claims of the asserted patent have been infringed
15 and whether any of those asserted claims of that patent are
16 invalid.

17 Now, if you decide that any claim has been
18 infringed and is not invalid, then you will need to decide
19 the amount of money damages that are to be awarded to KAIST
20 as compensation for that infringement.

21 You must also decide whether each of the
22 Defendants' infringement has been willful.

23 Now, before you decide any of the issues in this
24 case, you'll need to understand the role of the patent
25 claims.

1 The patent claims are those numbered sentences at
2 the end of the patent. The claims define the patent owner's
3 rights under the law. The claims are important because it's
4 the words of the claims themselves that define what the
5 patent covers. The figures and the text in the rest of the
6 patent provide a description, examples, and a context for
7 the invention. They provide a context for the claims, but
8 it is the claims that define the breadth of the patent's
9 coverage.

10 Each claim is effectively treated as if it were its
11 own separate patent, and each claim may cover more or may
12 cover less than any other claim. Therefore, what a patent
13 covers collectively or as a whole depends on what each of
14 its claims cover.

15 You'll first need to understand what each claim
16 covers in order to decide whether or not there is
17 infringement of that claim and to decide whether or not the
18 claim is invalid. And the first step is to understand the
19 meaning of the words used in the patent claim.

20 Now, the law says that it is my role as the Judge
21 to define the terms of the claims, but it's your role as the
22 jury to apply my definitions to the issues that you've been
23 asked to decide in this case.

24 I'll now explain how a claim defines what it
25 covers. A claim sets forth in words a set of requirements.

1 Each claim sets forth its requirements in a single sentence.
2 If a device satisfies each of the requirements in that
3 sentence, then it is covered by and infringes that claim.

4 There can be several claims in a patent. A claim
5 may be narrower or broader than another claim by setting
6 forth more or fewer requirements. The coverage of a patent
7 is accessed on a claim-by-claim basis.

8 In patent law, the requirements of a claim are
9 upon -- are often referred to as the claim elements or the
10 claim limitations. Those terms mean the same thing.

11 When a product meets all the requirements of a
12 claim where it meets all of its limitations or all of its
13 elements, the claim is said to cover that product, and that
14 product is said to fall within the scope of that claim.

15 In other words, a claim covers a product where each
16 of the claim elements or limitations is present in that
17 product. If a product is missing even one limitation or
18 element of a claim, the product is not covered by that
19 claim. And if the product is not covered by the claim, the
20 product does not infringe the claim.

21 This case involves two types of patent claims,
22 independent claims and dependent claims.

23 An independent claim does not refer to any other
24 claim in the patent. It stands alone. An independent claim
25 sets forth all the requirements that must be met in order to

1 be covered by the claim, and it's not necessary to look to
2 any other claim in the patent to determine what an
3 independent claim covers.

4 However, a dependent claim does not by itself
5 recite all the requirements of the claim but refers to
6 another claim or claims for some of its requirements. In
7 this way, the dependent claim depends on another claim.

8 The law considers a dependent claim to incorporate
9 all the requirements of the claim or claims to which it
10 refers or from which it depends, as well as the additional
11 claims set forth within the dependent claim itself.

12 To determine what a dependent claim covers, it's
13 necessary to look at both the dependent claim and any other
14 claim to which it refers, or as we sometimes say, from which
15 it depends.

16 And a product that meets all the requirements of
17 both the dependent claim and the claim or claims from which
18 it refers or from which it depends is covered by that
19 dependent claim.

20 The claims of the patent-in-suit use the word
21 "comprising." Comprising means including or containing. A
22 claim that includes the word "comprising" is not limited to
23 the methods or devices having only the elements recited in
24 the claim but also covers methods or devices that add
25 additional elements.

1 For example, if you take a claim that covers the
2 invention of a table, if the claim recites a table
3 comprising a tabletop, four legs, and the glue that holds
4 the legs to the tabletop, the claim will cover any table
5 containing those structures, even if the table also contains
6 other structures, such as leaves to go in the tabletop or
7 wheels to go on the ends of the legs.

8 Now, that's a simple example of using the word
9 "comprising" and what it means. In other words, ladies and
10 gentlemen, it can have other features in addition to those
11 that are covered by the patent.

12 Now, the law says it's my role to define the terms
13 of the claims, and it's your role to apply my definitions to
14 the issues that you're asked to decide in this case.

15 For any words in the claims for which I have not
16 provided you with a definition, you should apply their plain
17 and ordinary meaning. My interpretation of the language
18 should not be taken by you as an indication that I have a
19 view regarding the issues of infringement or validity.
20 Those issues are yours to make.

21 Now, during your deliberations, you must apply
22 these meanings which I have provided regarding the
23 construction of the terms in the claim language. These
24 terms which I have construed are set forth in your juror
25 notebooks. And you have also been provided with a complete

1 copy of the '055 patent, and you may use these in your
2 deliberations.

3 I'll now instruct you on the specific rules that
4 you must follow to determine whether the Plaintiff, KAIST,
5 has proven that the Defendants have infringed the asserted
6 claims of the '055 patent.

7 In determining infringement, once the patent is
8 issued, the owner of the patent has the right to stop others
9 from making, using, selling, or offering for sale the
10 patented invention throughout the United States or importing
11 it into the United States for the life of the patent. If a
12 person makes, uses, sells, or offers for sale within the
13 United States or imports into the United States what is
14 covered by a patent claim without the patent owner's
15 permission, that person is said to infringe the patent. For
16 any claim of infringement, an accused infringer's ownership
17 of its own patent is not a defense to infringement.

18 In reaching your decision on infringement, keep in
19 mind that only the claims of a patent can be infringed. To
20 determine whether there is infringement, you must compare
21 the asserted patent claims as I have defined each of them
22 for you to the accused products to determine whether or not
23 there is infringement.

24 That is the only correct comparison. The claims
25 asserted against the accused products.

1 You should not compare the accused products with
2 any specific example set out in the patent or with the
3 patent owner's commercial products or with the prior art in
4 reaching your decision on infringement.

5 As I have reminded you throughout the trial, the
6 only correct comparison is between the accused products and
7 the language of the claim itself.

8 Now, you must reach your decision as to each
9 assertion of the infringement based on my instructions about
10 the meaning and scope of the claims, the legal requirements
11 for infringement, and the evidence that's been presented
12 throughout the trial by both -- or both sides in this case,
13 all the parties in this case.

14 For each Defendant, you must determine whether the
15 Defendant makes, uses, sells, or offers for sale within the
16 United States or imports into the United States an accused
17 product covered by a patent claim without the patent owner's
18 permission.

19 You must make separate determinations based on the
20 evidence for the Samsung Defendants, the GlobalFoundries
21 Defendants, and Qualcomm.

22 As I remind you, the issue of infringement is
23 assessed on a claim-by-claim basis. Therefore, there may be
24 infringement as to one claim, even if there is no
25 infringement as to other claims.

1 I'll now instruct you on the specific rules that
2 you must follow to determine whether the Plaintiff, KAIST,
3 has proven that any of the Defendants have infringed one or
4 more of the patent claims involved in this case.

5 In order to prove direct infringement of a patent
6 claim, the Plaintiff, KAIST, must show by a preponderance of
7 the evidence that the accused product includes each and
8 every element, requirement, or limitation of the claim
9 either literally or under the Doctrine of Equivalents.

10 In order to infringe a patent claim, the accused
11 device must include each and every element of the claim.

12 In determining whether the Defendants infringe
13 patent -- excuse me, Plaintiff's asserted claims, you must
14 determine if the accused FinFET contains each and every
15 element recited in a claim of the '055 patent. A claim
16 element is literally present if it exists in the accused
17 device as it is described in the claim language either as I
18 have explained it to you, or if I did not explain it,
19 according to its plain and ordinary meaning as understood by
20 one of ordinary skill in the art.

21 Now, in making your determination, you must
22 consider each claim separately. Not all of the claims of a
23 patent must be infringed for infringement to exist. The
24 Plaintiff needs only establish by a preponderance of the
25 evidence that one claim is infringed. If you find that each

1 and every element of an asserted claim is found in the
2 accused device, then the claim is infringed, even if the
3 accused device may include additional features or functions
4 not found in the claims.

5 A patent can be directly infringed even if the
6 alleged infringer did not have knowledge of the patent and
7 without the infringer knowing that what it was doing is
8 infringement of the claim. A patent may also be directly
9 infringed, even though the accused infringer believes in
10 good faith that what it is doing is not infringement of the
11 patent.

12 Now, if you find that the accused products do not
13 literally infringe a claim of the '055 patent, you must then
14 determine whether the products infringe that claim under the
15 Doctrine of Equivalents.

16 Under the Doctrine of Equivalents, if a person
17 makes, uses, sells, or offers for sale within the United
18 States or imports into the United States a product that does
19 not meet all of the requirements of a claim and thus does
20 not literally infringe that claim, there can still be direct
21 infringement if the product satisfies that claim under the
22 Doctrine of Equivalents.

23 Under the Doctrine of Equivalents, a product
24 infringes a claim if the accused product contains elements
25 corresponding to each and every requirement of the claim

1 that is equivalent to, even though not literally met by, the
2 product.

3 You may find that an element is equivalent to a
4 requirement of a claim that is not literally met if a person
5 having ordinary skill in the field of the technology of the
6 patent would have considered the differences between them to
7 be insubstantial or would have found that the action or
8 structure performs substantially the same function in
9 substantially the same way to achieve substantially the same
10 result as the requirement of the claim.

11 In order for the structure to be considered
12 interchangeable, the action or structure must have been
13 known at the time of the alleged infringement to a person
14 having ordinary skill in the field of technology of the
15 patent.

16 Interchangeability at the present time is not
17 sufficient. In order to prove infringement by equivalents,
18 KAIST bears the burden to show the equivalency of each claim
19 element by a preponderance of the evidence.

20 In this case, KAIST contends that Defendants
21 willfully infringed its patent. If you decided that one or
22 more of the Defendants have infringed, you must go on and
23 separately address the additional issue of whether or not
24 each Defendants' infringement was willful.

25 The Plaintiff must prove willfulness by a

1 preponderance of the evidence. In other words, you must
2 determine for each Defendant whether it is more likely than
3 not that the Defendant willfully infringed.

4 You may find that a Defendant willfully infringed
5 if you find that it acted egregiously, willfully, or
6 wantonly. You may find the Defendants' actions were
7 egregious, willful or wanton if it acted in reckless or
8 callous disregard of or with indifference to the rights of
9 KAIST.

10 A Defendant is indifferent to the rights of another
11 when it proceeds in disregard of a high or excessive danger
12 of infringement that is known to it or was apparent to a
13 reasonable person in its position.

14 I'll now instruct you on the rules that you must
15 follow in deciding whether or not Defendants have proven
16 that the asserted claims of the patent are invalid.

17 An issued United States patent is accorded a
18 presumption of validity based on the presumption that the
19 United States Patent and Trademark Office, which you've
20 heard referred to throughout the trial simply as the PTO or
21 the Patent Office, acted correctly in issuing the patent.
22 This presumption of validity extends to all United States
23 patents. In order to overcome this presumption, the
24 Defendants must establish by clear and convincing evidence
25 that the Plaintiff's patent or any claim in the patent is

1 not valid.

2 When you were shown the patent video during jury
3 selection and prior to the beginning of the trial, you
4 learned about the examination process that patents undergo
5 prior to being issued by the Patent Office. For many
6 patents, this is the only time that the Patent Office
7 considers the validity of the application before the patent
8 is issued, and there is the possibility that the Patent
9 Office did not have all the relevant prior art before it
10 during its examination and issuance of the patent.

11 As a part of your consideration of whether the '055
12 patent is invalid, you should consider whether new prior art
13 has been presented at trial which was not before the Patent
14 Office before the patent was issued.

15 However, the examination process prior to issuance
16 is not the only time that a patent's validity may be
17 considered by the Patent Office. A party can request that
18 the Patent Office review a patent again in a proceeding
19 known as a review proceeding.

20 Requesting parties can present certain types of
21 prior art, specifically other patents or printed
22 publications, to the Patent Office for consideration in
23 these review proceedings.

24 Sometimes these review proceedings may include
25 prior art that was considered by the examiner during

1 examination before the patent was issued. In other
2 instances, the prior art may be new to the Patent Office.

3 The Patent Office will conduct a review proceeding
4 after a patent has been issued if it believes there is a
5 likelihood that at least one claim in the patent is invalid
6 based on the newly presented prior art.

7 The Patent Office will not conduct this proceeding
8 if it does not believe there is a likelihood that at least
9 one claim of the patent is invalid based on the newly
10 presented prior art.

11 Just as you may consider whether new prior art has
12 been presented at trial that was not before the Patent
13 Office during the examination before issuance of a patent,
14 you may similarly consider the decision of the Patent Office
15 in conducting or not conducting a review proceeding after a
16 patent has been issued based on new prior art.

17 Like in infringement, invalidity, ladies and
18 gentlemen, is determined -- determined on a claim-by-claim
19 basis. You must determine separately for each claim whether
20 the claim is invalid. Each claim of the patent is presumed
21 valid, regardless of the status of any other claim in the
22 patent. Just because one claim is invalid does not mean
23 that any other claim is necessarily invalid.

24 Claims are construed in the same way for
25 determining infringement as for determining invalidity. You

1 must apply the claim language consistently and in the same
2 manner for the issues of infringement and for issues of
3 validity.

4 In making your determination as to invalidity, you
5 should consider each claim separately.

6 Some of these instructions that I'm giving you
7 refer to prior art. Prior art means technology and
8 information that was publicly available before the date of
9 the invention.

10 In considering prior art, you should consider prior
11 art that is relevant to the particular problems the inventor
12 faced.

13 Prior art includes:

14 (1) patents issued more than one year before the
15 filing of the patent or before the date of the invention;

16 (2) publications having a date of more than one
17 year before the filing of the patent or before the date of
18 the invention;

19 And (3) U.S. patents that have a filing date prior
20 to the date of the invention of the subject matter in the
21 patent.

22 Now, these instructions have sometimes been
23 referred to the -- sometimes referred to the date of the
24 invention. In this regard, you're instructed that there are
25 two parts of making an invention.

1 The inventor has the idea of the invention. This
2 is referred to as conception of the invention. A conception
3 of an invention is complete when the inventor has formed the
4 idea of how to make and use every aspect of the claimed
5 invention, and it can be made without the need for any
6 further inventive effort.

7 The actual making of the invention is referred to
8 as reduction to practice. An invention is said to be
9 reduced to practice when it is made and shown to work for
10 its intended purpose.

11 Under the patent laws, the date of invention is
12 generally the date that the patent application was filed.
13 This is also referred to as constructive reduction to
14 practice.

15 In this case, the filing date is February the 4th,
16 2003. Ordinarily, art dated before the application filing
17 date is prior art to the patent claims.

18 There are, however, circumstances under which art
19 dated before the application filing date is not prior art.
20 When the inventor was the first to conceive of the invention
21 and exercised reasonable diligence in reducing the invention
22 to practice, then art dated after the inventor's conception
23 is not prior art.

24 Reduction to practice occurs either as of the
25 filing of the patent application or when the invention was

1 actually made and shown to work for its intended purpose.

2 Reasonable diligence means that the inventor worked
3 continuously on reducing the invention to practice.

4 Interruptions necessitated by every day problems and
5 obligations of the inventor or others working with him or
6 her do not prevent a finding of diligence.

7 Now, I want to talk to you about anticipation by
8 prior art. The patent laws of the United States require
9 that invention must be new for a person to be entitled to a
10 patent.

11 The Defendants assert that the patented claims at
12 issue are invalid because they were not new or they lacked
13 novelty.

14 If an invention is not new, we say that it was
15 anticipated by the prior art. An invention that is
16 anticipated by the prior art is not entitled to patent
17 protection.

18 In order for a patent claim to be anticipated by
19 the prior art, each and every limitation of the claim must
20 be present in a single item of prior art, whether that prior
21 art is a publication or a prior patent, a prior invention, a
22 prior public use or sale or some other item of prior art.
23 You may not find that the prior art anticipates a patent
24 claim by combining two or more items of prior art. A
25 printed publication is only prior art if it was published

1 before the date of the invention or -- or more than one year
2 before the date of the filing of the application.

3 A printed publication or patent will not anticipate
4 unless it contains a description of the invention covered by
5 the patent claims that is sufficiently detailed to teach a
6 person -- a skilled person how to make and use the entire
7 invention without undue experimentation.

8 That means that a person skilled in the field of
9 the invention reading the printed publication or patent
10 would be able to make the invention using only an amount of
11 experimentation that is appropriate for the complexity of
12 the field of the invention and for the level of expertise
13 and knowledge of persons skilled in that field.

14 In deciding whether or not a single item of prior
15 art anticipates a patent claim, you should consider only
16 what is expressly stated or present in the prior art or
17 inherently present. A prior art reference does not have to
18 use the exact same words as the claims in order to
19 anticipate the claims.

20 Something is inherent in an item of prior art only
21 if it necessarily results from the practice of the prior art
22 and if a skilled person would recognize that to be the case.
23 The prior art must clearly and unequivocally disclose the
24 elements as arranged in the claim without needing to pick,
25 choose, and combine various disclosures from the prior art.

1 You cannot combine separate embodiments disclosed in the
2 prior art unless the prior art actually teaches or suggests
3 combining those embodiments.

4 In order to find a claim invalid, you must find by
5 clear and convincing evidence that a patent claim is not
6 new, as explained above.

7 Defendants contain -- contend in this case that the
8 asserted claims of the asserted patent are invalid as being
9 obvious. Even though an invention may not have been
10 identically disclosed or identically described in a single
11 prior art reference before it was made by an inventor, the
12 invention may have been obvious to a person of ordinary
13 skill in the field of technology of the patent at the time
14 the invention was made.

15 The Defendants bear the burden of establishing
16 obviousness by clear and convincing evidence. A patent
17 claim with several elements is not proved obvious merely by
18 demonstrating that each of the elements was known. Most, if
19 not all, inventions rely on the building blocks of prior
20 art.

21 Now, in determining whether the patent is invalid
22 because of obviousness, you must consider the scope and
23 content of the prior art, the differences between the prior
24 art and the claimed invention, and the level of ordinary
25 skill in the art. In determining the level of ordinary

1 skill in the art, you -- you should consider the person of
2 ordinary skill as one who is presumed to be aware of all the
3 pertinent prior art. The skill of the actual inventor is
4 irrelevant because inventors may possess something that
5 distinguishes them from workers of ordinary skill in the
6 art.

7 In considering whether a claimed invention is
8 obvious, you should consider whether as of the priority date
9 of the asserted patent there was a reason that would have
10 prompted a person of ordinary skill in the field to combine
11 the known elements in a way that the claimed invention does
12 taking into account such facts as:

13 (1) whether the claimed invention was merely the
14 predictable result of using prior art elements according to
15 their known function;

16 (2) whether the claimed invention provides an
17 obvious solution to a known problem in the relevant field;

18 (3) whether the prior art teaches or suggests the
19 desirability of combining elements in the claimed invention,
20 such as where there is a motivation to combine;

21 (4) whether the prior art teaches away from the
22 combining elements -- away from combining elements in the
23 claimed invention;

24 (5) whether it would have been obvious to try the
25 combinations of elements in the claimed invention;

1 And (6) whether the change resulted more from
2 design incentives or other market forces.

3 Now, in determining whether the claimed invention
4 was obvious, consider each claim separately and consider
5 only what was known at the time of the invention. In
6 determining whether the claim invention was obvious, do not
7 use hindsight. In other words, you should not consider what
8 a person of ordinary skill in the art would know now or what
9 has been learned from the teaching of the patent-in-suit.

10 In making these assessments, you must also take
11 into account any objective evidence, sometimes called
12 secondary considerations, that may have existed at the time
13 of the invention and afterwards that shed light on
14 non-obviousness. These include:

15 (1) whether the invention was commercially
16 successful. However, there must be a causal connection
17 between the patented features of the invention and the
18 commercial success of the device;

19 (2) whether the invention satisfied a long-felt
20 need in the art;

21 (3) whether others had tried and failed in making
22 the invention;

23 (4) whether others copied the invention;

24 (5) whether there were changes or related
25 technologies or market needs contemporaneous with the

1 invention;

2 (6) whether others sought or obtained rights to the
3 patent from the patentholder;

4 (7) whether the invention achieved unexpected
5 results;

6 (8) whether others in the field praised the
7 invention;

8 And (9) whether the invention departed from other
9 principles or accepted wisdom of the art.

10 These objective indicia can show that the invention
11 is not obviousness. While these objective indicia must be
12 taken into account, you must consider all of the evidence
13 related to obviousness before you reach a decision.

14 In order to find any of the asserted claims of the
15 patent invalid you must find that Defendants have proven
16 obviousness by clear and convincing evidence.

17 Now, several times in my instructions, ladies and
18 gentlemen, I've referred to a person of ordinary skill in
19 the field of the invention. It's up to you to decide the
20 level of ordinary skill in the field of the invention.

21 In deciding what level of ordinary skill is, you
22 should consider all of the evidence introduced at trial
23 including:

24 (1) the levels of education and experience of
25 persons working in the field;

1 (2) the types of problems encountered in the field.
2 (3) prior art solutions to those problems;
3 (4) rapidity with which innovations are made;
4 And (5) the sophistication of the technology.

5 A person of ordinary skill in the art is a
6 hypothetical person who is presumed to be aware of all the
7 relevant prior art at the time of the claimed invention.

8 If you find that any of the Samsung Defendants, the
9 GlobalFoundries Defendants, or Qualcomm have infringed any
10 of the claims of the '055 patent, and if you find these
11 claims are not invalid, then you should consider the amount
12 of money the Plaintiff should recover or receive as damages.

13 I'll now instruct you as to the calculation of
14 damages. Even though I'm instructing you on how you should
15 measure damages, this should not be taken to mean that I
16 think either side is right. These are issues for you to
17 resolve under the instructions that I'm giving you.

18 I'm instructing you on damages only so that you
19 will have guidance should you decide that the Plaintiff is
20 entitled to recover damages.

21 Now, the Plaintiff has the burden of proving by a
22 preponderance of the evidence the amount of damages caused
23 by each Defendants' infringement. If you find that there
24 has been infringement, the owner of the patent is entitled
25 to an award of damages adequate to compensate for the

1 infringement, which in this case would be a reasonable
2 royalty adequate to fully compensate the Plaintiff for the
3 use the Defendants made of the invention.

4 Your damages determination must -- must not include
5 additional sums to punish a Defendant or to set an example.
6 Your damages also should not be based on the size of a
7 Defendant or a perceived ability to pay an award.

8 This determination of a damages award is not an
9 exact science, ladies and gentlemen, and the amount need not
10 be proven with unerring precision. You may approximate, if
11 necessary, the amount to which the patent owner is entitled.
12 It may be proper to award a damages amount if the evidence
13 shows the extent of damages as a matter of just and
14 reasonable inference.

15 A reasonable royalty is the minimum amount of
16 damages that a patent owner may recover. A royalty is the
17 amount of money a licensee pays to a patent owner for each
18 article the licensee makes or uses or sells under the
19 patent. A reasonable royalty is an amount of money a
20 willing patent owner and a willing prospective licensee
21 would have agreed upon at a hypothetical negotiation at the
22 time the Defendants began infringing the '055 patent.

23 In considering this hypothetical negotiation, you
24 should focus on what the expectations of the patent owner
25 and the infringer would have been had they entered into an

1 agreement at that time and they -- and that -- and had they
2 acted reasonably in their negotiations.

3 In determining this, you must assume that both
4 parties believed the patent was valid and infringed, and the
5 patent owner and infringer were willing to enter into an
6 agreement.

7 The reasonable royalty you determine must be the
8 royalty that would have resulted from this hypothetical
9 negotiation and not simply the royalty that either party
10 would have preferred.

11 In making your determination about the amount of a
12 reasonable royalty, it's important that you focus on the
13 time period when the infringer first infringed the patent
14 and the facts that existed at that time.

15 Your -- your determination does not depend on the
16 actual willingness of the parties to this lawsuit to engage
17 in such negotiations. You are to assume that the Defendants
18 are willing to pay. Your focus should be on what the
19 parties' expectations would have been had they entered into
20 negotiations for royalties at the time the first -- excuse
21 me, at the time the infringing activity, assuming there is
22 infringement, and the patent is invalid -- and the patent is
23 valid.

24 You may consider sales' expectations at the time
25 the infringement began as a basis for royalty rate. You may

1 also consider the actual profits subsequently earned in the
2 infringement period, but only in an indirect and limited way
3 as some evidence bearing on a directly relevant inquiry into
4 anticipated profits.

5 Evidence of things that happened after the
6 infringement first began may be considered in evaluating the
7 reasonable royalty only to the extent the evidence aids in
8 assessing what royalty would have resulted from a
9 hypothetical negotiation.

10 Although evidence of the actual profits an
11 infringer made may be considered in determining -- in
12 determining a reasonable royalty at the time of the
13 hypothetical negotiation, the royalty may be -- may not be
14 limited or increased based on the actual profits the alleged
15 infringer made.

16 Where the parties dispute a matter concerning
17 damages for infringement, it is KAIST's burden to prove what
18 is more probable than not.

19 A reasonable royalty can take the form of a running
20 royalty or a fully paid-up lump-sum royalty.

21 A running royalty is a fee that is paid for the
22 right to use the patent that is paid for each unit of the
23 infringing product sold.

24 A paid-up lump-sum is when the infringer pays a
25 single price for a license covering both past and future

1 infringing sales.

2 If you find KAIST is entitled to damages, you must
3 determine -- determine whether the parties would have agreed
4 to a running royalty or a fully paid-up lump-sum royalty at
5 the time of the hypothetical negotiation.

6 The amount you find as damages must be based on the
7 value attributable to the patented technology as distinct
8 from other unpatented features of the accused product. A
9 patentholder should only be compensated for the approximate
10 incremental value derived from his invention. The royalty
11 must reflect the value attributable to the infringing
12 features of the product.

13 If unpatented features contribute to the value of
14 accused products -- of an accused product, you must
15 apportion that value to exclude any value attributable to
16 unpatented features.

17 The Plaintiff, KAIST, bears the burden to establish
18 amounts attributable to the patented features.
19 In determining the reasonable royalty, you should consider
20 all the facts known and available to the parties at the time
21 the infringement began.

22 Some of the kinds of factors you may consider in making your
23 determination are:

24 (1) whether the patent owner had an established
25 royalty for the invention, in the absence of such licensing

1 history, any royalty arrangements that were generally used
2 and recognized in the particular industry at the time;

3 (2) the nature of the commercial relationship
4 between the patent owner and the licensee, such as whether
5 they were competitors or whether their relationship was that
6 of inventor and promoter;

7 (3) the established profitability of the patented
8 product, its commercial success, and its popularity at the
9 time;

10 (4) whether the patent owner had an established
11 policy of granting licenses or retaining the patented
12 invention as his exclusive right, or whether the patent
13 owner had a policy of granting licenses under -- under
14 special conditions designed -- designed to preserve his
15 monopoly;

16 (5) the size of the anticipated market for the
17 invention at the time the infringement began;

18 (6) the duration of the patent of the license, as
19 well as the terms and scope of the license, such as whether
20 it's exclusive or non-exclusive and subject to territorial
21 restrictions;

22 (7) the rates paid by the licensee for the use of
23 other patents comparable to the Plaintiff's patent;

24 (8) whether the licensee's sales of the patented
25 invention promote sales of its other products and whether

1 the invention generates sales to the inventor of his
2 non-patented items;

3 (9) the utility and advantages of the patent
4 property over the old modes or devices, if any, that had
5 been used for working out similar results;

6 (10) the extent to which the infringer used the
7 invention and any evidence probative of the value of such
8 use;

9 (11) the portion of the profits in the particular
10 business that are customarily attributable to the use of the
11 invention or analogous inventions;

12 (12) the portion of the profits that should be
13 credited to the invention -- to the invention as
14 distinguished from the non-patented elements, the
15 manufacturing process, business risk, or significant
16 features or improvements added by the infringer;

17 (13) the opinion and testimony of qualified experts
18 of the patentholder; and

19 (14) the amount that a licensor, such as the
20 patentee, and a licensee, such as the infringer, would have
21 agreed upon at the time the infringement began if both sides
22 had been reasonably and voluntarily trying to reach an
23 agreement.

24 That is, what amount a prudent licensee who desired
25 as a business proposition to obtain a license to manufacture

1 and sell a particular article embodying the patented
2 invention would have been willing to pay as a royalty and
3 yet be able to make a reasonable profit and which amount
4 would have been acceptable to a prudent patentee who was
5 willing to grant a license.

6 Ladies and gentlemen, none of these factors is
7 dispositive, and you can and you should consider the
8 evidence that has been presented in this case -- presented
9 to you in this case on each of these factors.

10 You may also consider any other factors which in
11 your minds would have increased or decreased the royalty the
12 infringer would have been willing to pay and the patent
13 owner would have been willing to accept acting as normally
14 prudent business people.

15 You are permitted to consider all the benefits
16 conferred to the Defendants through their infringement of
17 the '055 patent, including evidence of cost savings that the
18 Defendants have achieved and can expect to achieve through
19 their use of the '055 patent.

20 A reasonable royalty can exceed profits expected by
21 the patentee.

22 In determining a reasonable royalty, you may also
23 consider evidence concerning the availability or lack
24 thereof of non-infringing alternatives to the patented
25 invention.

1 You must not award the Plaintiff any additional
2 amount for the purposes of punishing the Defendants or for
3 setting an example. You must not consider the Plaintiff's
4 allegations of willfulness in considering damages.

5 Consideration of willfulness is entirely separate
6 from the question of damages. You may not increase damages
7 because you find willfulness or decrease damages because you
8 did not find willfulness, nor may you -- nor may you include
9 damages that are speculative.

10 Now, with these instructions, ladies and gentlemen,
11 we're ready at this time to hear closing arguments for the
12 attorneys for the parties in the case.

13 Mr. Bunt, you may proceed to present the
14 Plaintiff's first closing argument.

15 MR. BUNT: Thank you, Your Honor. May it please
16 the Court.

17 Good morning, ladies and gentlemen. I want to
18 begin by thanking you again for your service this week. I
19 know we have presented a lot of information and asked you to
20 consider it in a very rapid fashion. And I realize you've
21 had to spend long days away from your family and your jobs.
22 I know that's been a sacrifice, so I just want to say we
23 truly appreciate your service.

24 At the beginning of this trial, His Honor discussed
25 the importance of the Seventh Amendment to the Constitution,

1 which guarantees the right to a trial by jury.

2 Our founding fathers placed an extraordinary power
3 in the hands of our -- of the citizens, the power to
4 dispense justice.

5 Our Constitution begins with the following words:
6 We, the people of the United States, in Order to form a more
7 perfect Union, establish Justice.

8 Justice is the very first thing that we the people
9 established in this country, and that is what we are seeking
10 from you today.

11 If you recall back to the opening statements, you
12 heard two different stories. We told you about Professor
13 Lee's invention that resulted in the '055 patent.

14 Professor Lee, if you wouldn't mind standing up for
15 me for a moment.

16 Professor Lee, as you've heard, is one of the most
17 respected researchers in the world. He is the director of
18 the Inter-University semiconductor research group for all of
19 Korea. He won Korea's highest award for the invention
20 described in the '055 patent. And he won that award for
21 creating the first bulk FinFET device in his lab, and he
22 didn't need Samsung, Qualcomm, or GlobalFoundries. He did
23 that all by himself.

24 Thank you, Professor Lee, you may sit down.

25 Now, to hear Samsung tell it, Professor Lee needed

1 Samsung to pay his bills. They basically told you that in
2 opening statements, that Professor Lee should be grateful
3 for their help.

4 That's where Defendants' credibility crisis begins
5 in this case. There has not been one shred of evidence that
6 Professor Lee needed Samsung for anything with regard to
7 this invention. In fact, as you heard from Mr. Dong-won
8 Kim, Samsung's corporate representative, he testified that
9 Professor Lee never received any funding from Samsung
10 relating to his invention.

11 Ladies and gentlemen, credibility is important, and
12 you are the sole judges of the credibility of the evidence.
13 So I'd ask you to ask yourselves who has been credible in
14 this case.

15 You'll recall that Samsung claimed Professor Lee
16 never raised any concerns with Samsung. In fact, they asked
17 you about this in voir dire.

18 Mrs. Smith asked you if you saw someone putting an
19 oil rig up on your property, would it make sense to wait 12
20 years before you said something about it?

21 Now, during opening statements, the Defendants then
22 used this timeline that you see here, without the additional
23 language at the back -- on the right side, and they used the
24 timeline, and it says, in the middle, Lee never raised
25 concerns to Samsung.

1 What's missing from that timeline, though?

2 When Samsung started talking about the possibility
3 of going to a bulk FinFET design around 2011, Professor Lee
4 notified them of his patent. He notified them again in
5 2012. And then in 2015, when Samsung released its first
6 bulk FinFET product, Professor Lee notified Samsung yet
7 again. And he, once again, notified them in 2017 of his
8 patent.

9 THE COURT: Four minutes have been used.

10 MR. BUNT: He also -- thank you, Your Honor.

11 But did that make a difference to the Defendants?
12 No, because Professor Lee was just a small inventor.

13 You'll recall what Defendants said in their opening
14 statement. Plaintiff was not making or selling a product,
15 so his products -- his property rights did not matter to the
16 Defendants.

17 Basically, the Defendants thought we'll just ignore
18 Professor Lee, and eventually he'll go away.

19 The most glaring example of the Defendants'
20 credibility problem was their assertion during opening
21 statement that the Mizuno prior art reference was never in
22 front of the United States Patent Office. Of course, we
23 learned yesterday that that was completely false.

24 Samsung filed a petition with the U.S. Patent
25 Office while this lawsuit was pending trying to get the

1 Patent Office to invalidate Professor Lee's patent in a
2 review proceeding. And in that petition, as you can see
3 here, it cited the Mizuno prior art reference. What did the
4 United States Patent Office do? It rejected Samsung's
5 attempt to invalidate the patent.

6 Ladies and gentlemen, when you go back to the jury
7 room to deliberate, please ask yourself who told conflicting
8 stories in this case. Ask yourself who answered questions
9 directly and who tried to avoid answering questions
10 directly. Please ask yourself who seemed qualified to give
11 the testimony that they did.

12 Thank you, ladies and gentlemen. I look forward to
13 your verdict. Mr. Sheasby is going to talk to you about
14 infringement, willful infringement, validity, and damages.

15 MR. SHEASBY: May it please --

16 THE COURT: You may continue, counsel.

17 MR. SHEASBY: May it please the Court.

18 I want to stop -- or start where Mr. Bunt stopped,
19 which on the issue of credibility.

20 And I think what he said was right, credibility is
21 important.

22 And when we think about credibility, the first
23 place it comes into play is with the question of
24 infringement.

25 At the beginning of this trial, I told you that I

1 thought that Professor Kuhn was a -- was a special person,
2 and I actually used that phrase, and maybe -- maybe you
3 thought that was a bit funny that I used that phrase. But
4 during this trial, I was in awe of Professor Kuhn. I was in
5 awe of her. And I actually want her to stand and be
6 acknowledged.

7 And at a very basic level, the infringement
8 question comes down to this: For you to find that
9 Defendants do not infringe this patent requires you to
10 conclude that Dr. Kuhn is an incredible witness. It
11 requires you to completely reject the credibility of a woman
12 who has spent her entire life designing bulk FinFETs. It
13 requires you to reject the credibility of a woman who has
14 create -- who created the first commercial bulk FinFET at
15 Intel. And it requires you to accept the credibility of Dr.
16 Subramanian and Dr. Wallace, both of whom seemed like very,
17 very smart individuals, but both of whom have no experience,
18 whatsoever, in the field of the '055 patent.

19 The question of infringement is simple. Professor
20 Kuhn walked through every limitation. And for you to find
21 non-infringement is for you to reject utterly the label and
22 the careful attention played by Professor Kuhn.

23 Coming to the point of credibility, we heard this
24 talk about Hafnium dioxide, and we heard so much of it in
25 the opening, and it -- when Professor Kuhn got on the stand,

1 she told us it's a complete and utter distraction. The
2 claims include Hafnium dioxide. They cover any gate oxide
3 layers. The Hafnium dioxide layer was in Intel's FinFET
4 design, and Intel licensed it, and the Hafnium dioxide layer
5 was in the 20-nanometer failed planar transistors.

6 What allowed them to go to 14 nanometers? It
7 wasn't Hafnium dioxide, it was the design of the '055
8 patent.

9 Now, at the beginning of Dr. Subramanian's
10 testimony, you may have been thinking, well, what
11 limitations are actually disputed? And one of the things I
12 did, and I know it was a long day, but I actually carefully
13 walked through and asked him what limitations are disputed.
14 And in his testimony, the only limitations that he disputed
15 were those in yellow, and I know this because I asked him
16 expressly -- let's pull up Thursday AM, 82, 1 through 16,
17 and trailing.

18 Question: There are a number of limitations in the
19 claims of the '055 patent that you don't dispute are met by
20 the 14-nanometer transistors in this case?

21 Answer: Yes, that's true.

22 Question: In your report, you don't discuss the
23 limitation, a gate which is formed on said first and second
24 oxide layer, fair point?

25 He goes on to answer: I don't remember it.

1 And then he finally admits he does not find that
2 limit -- he doesn't find that limitation listing from the
3 14 nanometers.

4 So I want to show that to you because I think it's
5 very important to focus on credibility. Even Samsung's own
6 paid expert admitted that many of the limitations, including
7 the gate -- a gate formed on second oxide layer limitation
8 was met.

9 Can we go back to the slides now?

10 So when we start thinking about infringement, we
11 start from the word "comprising." And Professor Kuhn talked
12 to you about the importance of the word "comprising."

13 Comprising means you just have to have the elements
14 in the claim. You can put anything else you want in the
15 claim, and it's still infringing.

16 And I think that's a very important point for you
17 to remember. And potentially write down what -- during this
18 argument when you take into court.

19 Now, we also heard that infringement is based on
20 both literal infringement and equivalence. So even if you
21 think the element is not met literally, you have to ask the
22 question is something equivalent present? It doesn't have
23 to be literally there, it just needs to be something
24 equivalent.

25 Now, the first limitation that they disputed was

1 wall-shape Fin active region. And Dr. Kuhn talked about
2 this in her direct. And if you remember, in every slide
3 when they talked about wall-shape, they showed the side view
4 of the Fin. Remember how they called it a shark's fin? And
5 they said -- they showed it a side Fin.

6 And I talked to Dong-won Kim, who was their
7 corporate representative, and I said: Hey, that's the width
8 of the Fin that you're showing, right?

9 And he said: Yes.

10 And I took him to the abstract. And if you go to
11 the abstract of the patent, you will see that the shape --
12 that when it talks about wall-shape, it means along the
13 channel length direction. What that means is you have to
14 look at it from the top, not the side.

15 So they were showing you that -- what they called a
16 shark's fin, but they were showing you the width, not the
17 length. When you look at the length and you can see this in
18 DX-336, if you want to ask for this piece of evidence -- if
19 you look at it from the top, it absolutely looks like a
20 wall. Any common sense person would understand that when
21 you look at it from the top, it's a wall.

22 Dr. Kuhn explained that to you, and they showed you
23 the completely different side.

24 Now, they also talk a fact -- a fact that, oh, it
25 can't be wall-shaped because we have rounded -- our corners

1 have been rounded. But Dr. Kuhn also told you that's a --
2 that's a nonsensical argument because the wall-shape claim
3 limitations expressly allow for the corners to be rounded.

4 So when they tell you they're non-infringing
5 because they have a continuous curve, that's the exact
6 opposite of what the specific claims say.

7 And Dr. Subramanian admitted this. He admitted
8 that oxidation can convert corners into one continuous
9 round.

10 Now, the next issue that they spoke about was the
11 issue of oxide thickness. Once again, Dr. Kuhn did it
12 right. Was the -- was the oxide thickness equal on all
13 sides of the Fin? She did the measurements using the exact
14 same procedure she used at Intel, and she concluded that it
15 was equal.

16 Now, ask yourself this question. These are three
17 of the largest companies in the world. GlobalFoundries
18 spent \$14.7 billion to build their factory. Samsung is the
19 largest company in Korea. Qualcomm is the largest mobile
20 chip designer in the world. They couldn't afford to do
21 their own measurements? The only systematic measurements
22 you saw were done by Professor Kuhn.

23 Now, I next want to talk about the issue of first
24 oxide layer and gate oxide layer. But before I do that, I
25 want you to remember a very important rule about the claims.

1 You'll see the claims say a first oxide layer, a gate oxide
2 layer, and a second oxide layer. But that word "a," which
3 seems so important -- unimportant to us as lay people, is
4 incredibly important in the patent. It means one or more.
5 You can have more than one gate oxide layer. You can have
6 more than one first oxide layer. You can have more than one
7 second oxide layer.

8 So all that stuff about, oh, we have a Hafnium
9 layer, we have a silicon dioxide layer, that was a giant
10 misdirection. And Dr. Subramanian admitted it because the
11 claims expressly say "a".

12 Now, the next thing I'm going to do, and I'm going
13 to give this a try. I'm going to speak much louder. I'm
14 going to draw for you what I think Professor Kuhn taught me.
15 And you can see if you learned the same thing or not.

16 So I believe Professor Kuhn taught us about a
17 substrate with a Fin. And in Professor Lee's patent, it can
18 be curved at the bottom. She showed us that figure. And it
19 can be rounded at the top.

20 Now, I believe Professor Kuhn taught us about oxide
21 layers. And she noted that when you make an oxide layer,
22 you make it in one continuous flow.

23 And then she taught us about a gate which sits on
24 top of the oxide and the substrate. I think that's pretty
25 fair about what she taught us.

1 Now, there's a lot of disputes about whether the
2 first oxide limitation layer and the gate oxide limitation
3 layer were met. But once again, I would submit to you that
4 that is a significant amount of misdirection.

5 And I know that for the following reason. Let's
6 turn to Thursday AM, and we're going to look at some of Dr.
7 Subramanian's testimony.

8 It says: Question: In fact, the specification
9 describes the first oxide and the gate oxide layer as
10 different regions of one continuous layer that surrounds the
11 Fin active region.

12 That generally -- that's a fair description. He
13 admitted it.

14 Now, maybe because it was late in the day, that you
15 didn't realize how important that was. But he's saying this
16 one layer can, depending on where it is, serve as the first
17 oxide layer. It can serve as the gate oxide layer. It can
18 serve as the second oxide layer. So there's regions that
19 you can define, gate -- sorry -- first, gate, second.

20 THE COURT: 17 minutes have been used.

21 MR. SHEASBY: So what you have is you have a very
22 clear description from Professor Kuhn about why the
23 limitations have been met.

24 Now, let's see if there's any agreement on those
25 limitations.

1 Let's go back to the slides.

2 And I think you'll see that it -- that there is.
3 This is Dr. Wallace. Dr. Wallace says there's a gate oxide
4 layer. It's made up of Hafnium, and it's made up of
5 silicon. And the gate oxide layer is on the top -- on the
6 top -- on top of it there's formed a gate. And the gate
7 oxide layer is formed on the Fin. So Dr. Wallace admits
8 each and every limitation.

9 Now, let's go to -- so let me just stop there.

10 And I want to say this quite clearly. What I just
11 drew there, the experts in this case on both sides admit.
12 The only person who disagrees with this is counsel for
13 Defendants who's going to be speaking next.

14 First oxide layer met. Gate oxide layer met. Gate
15 on second oxide layer met. Every single expert in the case
16 agrees with this. And you will not see one slide of
17 testimony from Defendants from any independent expert
18 disputing that these limitations are met.

19 Now, I want to talk about Professor Lee's patent
20 and its validity. Patents are assumed valid -- presumed
21 valid, and that's why the weight of evidence that is
22 necessary to invalidate the patent is so high.

23 I want to talk about the critical fact that the
24 references that are being used in this case to suggest
25 you -- you invalidate this patent were rejected by the

1 Patent Office in petitions filed by Samsung but also filed
2 by GlobalFoundries and Qualcomm.

3 I now want to talk about willfulness. You do not
4 need to find willfulness in order to find infringement.
5 Whether you think they had a guilty heart or not, whether
6 you think they did it intentionally or not is irrelevant to
7 the question of infringement.

8 But on the issue of copying, I think something
9 unbelievable happened at this trial. And I wanted to
10 emphasize that.

11 Dr. Kuhn did an investigation. Remember how she
12 told you she was a fellow at Intel? She was incredibly
13 senior. She did an investigation to determine if there was
14 misconduct. And she found that based on the evidence she
15 saw, there was copying.

16 Now, you heard a lot of Samsung employees saying we
17 didn't copy. But what's interesting is they hired Vivek
18 Subramanian to speak for them. And you heard that he gets
19 paid to be an expert witness all the time. He's gotten paid
20 by Samsung to do it previously. And he did no
21 investigation, none whatsoever. As to damages, amounts need
22 not be proven with unerring certainty.

23 Mr. Becker, who I actually thought was a very nice
24 man, said things that were so important to this case. He
25 said that there can be patents that are worth hundreds of

1 millions of dollars. Did anyone else catch that when he
2 said that, when he acknowledged that there are patents that
3 are hundreds of millions of dollars, that there is nothing
4 out of the ordinary about what the Plaintiffs -- Plaintiff
5 asked in this case?

6 You heard from David Witt about the speed and
7 battery life benefits solely attributed to the '055 patent.
8 Three of the largest companies in the world, and they
9 couldn't be bothered to present you with their -- their own
10 numbers. The only numbers you have are from Mr. --
11 Mr. Witt.

12 Dr. Kelin Kuhn did a cost savings analysis with Roy
13 Weinstein. They're saving billions from using this. Three
14 of the largest companies -- multinational companies in the
15 world, they couldn't be bothered to say one thing about
16 different cost numbers.

17 Now, at a very basic level, the dispute between the
18 parties is simple. Mr. Becker asked the question how much
19 is the patent worth in 2011 when the Intel negotiation
20 occurred. And I think he probably gave a very fair answer
21 to that question, and I actually don't have a dispute with
22 him. I think that's what the patent was worth in 2011.

23 That's not the question we're asking today. The
24 question we're asking today is what is the patent worth in
25 2015 when we know that there is no other possible way of

1 doing what Samsung and Qualcomm and GlobalFoundries do?
2 What is it worth in 2015?

3 And you heard -- you heard the Judge say you can
4 consider whether there are any viable non-infringing
5 alternatives.

6 In 2011, there were many. Professor Kuhn told us
7 that. Professor Kuhn told us people laughed at her when
8 she -- in the community because Intel was so aggressively
9 bulk FinFET. By 2015, everyone needed -- needed it.

10 So what's the answer here? The answer here is that
11 Plaintiff should receive 300 million from Samsung, 296
12 million from Qualcomm, and 98 million from GlobalFoundries.
13 And that is a small portion, a small portion of the billions
14 these companies have made by stealing this invention.

15 Now, ladies and gentlemen, I just want to go
16 briefly through the verdict form.

17 For Question 1, we would respectfully ask you to
18 mark "yes" to the question of infringement.

19 For Question 2 on invalidity, we'd respectfully ask
20 that you mark "no."

21 For Question 3, as to whether there was
22 willfulness, we would respectfully ask that you mark "yes."

23 And for Question 4, we'd respectfully ask that you
24 analyze the value in 2005, that you mark "yes" for
25 reasonable royalty, and that you give the number that was

1 given by Dr. Kuhn, Mr. Witt, and our damages expert,
2 Mr. Weinstein.

3 Ladies and gentlemen of the jury, I'll be able to
4 speak with you one more time, but I will now cede the podium
5 to the Defendants. Thank you so much.

6 THE COURT: All right. The Defendants may now
7 present their closing argument.

8 Before Defendant begins his closing argument,
9 Plaintiff's counsel should move the easel back and turn it
10 to a clean sheet of paper.

11 Thank you.

12 Mr. Jacobs, you may proceed when you're ready.

13 MR. JACOBS: Thank you so much, Your Honor.

14 Ladies and gentlemen of the jury, I didn't have the
15 opportunity to tell you much about myself when I came
16 forward and presented my opening statement, but I have a
17 story I want to convey to you about something that happened
18 this week, and then I'm going to move on with the evidence
19 because I'm going to focus on the evidence here.

20 I started when I was a young man in the Army.
21 That's how I started. Before I went to college and law
22 school, I was in the Army. And I called home this week, and
23 I was talking to my daughter, my 13-year-old daughter. And
24 she said: I haven't heard from you in several days, it's
25 kind of like you're deployed.

1 And I said to her, I said: No, this isn't like
2 being deployed. We get less sleep than you do when we're
3 deployed when we're in trial.

4 Thank you for your service. We know and we have
5 watched and observed on behalf of all the Defendants and on
6 behalf of the Plaintiffs, we know that you have taken time
7 out of your busy schedules, and we appreciate it. This is
8 very, very valuable service, and we want to thank you for
9 your service.

10 Now, as I said, I'm not much into mud slinging, but
11 I certainly will push back when I see something that I think
12 is inappropriate or not correct.

13 And what I'm going to do is I'm going to walk
14 through and marshal the evidence here because I think the
15 evidence tells a very, very different story than what we
16 just saw.

17 Remember what Judge Gilstrap told us at the
18 beginning. Pictures that are drawn by counsel, that's not
19 evidence. Evidence is what we saw, what witnesses said, and
20 what witnesses testified to when they got up here and
21 actually were in the box, and we had a chance to talk to
22 them.

23 And so as I told you at the very, very beginning of
24 this case, Professor Lee asked Samsung to help. I don't
25 think there's any dispute about that. Samsung agreed.

1 Dr. Tai-Su Park, we had a chance to see him, and
2 others started to build his device at Samsung. And the
3 evidence was clear, and nobody has refuted this evidence.
4 The idea that Dr. Lee had, that Professor Lee had, would not
5 work. It just wouldn't work. So they created -- Samsung
6 created their own different and independent bulk FinFET that
7 has something very, very different in it than what Professor
8 Lee's invention has in it.

9 So the Defendants have taken a stand here, and
10 they've said, you know, enough is enough. We don't infringe
11 the '055 patent. And the amount of damages that KAIST IP is
12 asking for is outrageous.

13 So how do we know with the evidence that we saw
14 that this case is about the Defendants doing something
15 different, and this is very important, and I'm going to show
16 it to you in a few minutes. The evidence has shown that
17 Professor Lee specifically omitted the use of Hafnium oxide
18 from his idea, okay? The evidence has shown that he said
19 from the beginning: I'm not using Hafnium oxide in my idea.

20 That was his choice back in 2001. He was a
21 researcher. That was his choice. He made the express
22 choice to exclude the use, not use Hafnium oxide in his
23 research device. And that's very, very important, because
24 now, the Plaintiff is coming forward into this court, and
25 they are accusing the Defendants of infringement, trying to

1 accuse us of infringement for using a concept, Hafnium
2 oxide, that Professor Lee intentionally chose in 2002 not to
3 include in his device.

4 Is that fair? You're going to judge that. You are
5 the judges of credibility. You make the determination as to
6 whether that fair is -- is not (sic). I'm going to show it
7 to you as we walk through the evidence.

8 So as I talked with you a little bit about in the
9 beginning, this case has a lot to do with time. Time
10 marches on. I showed you the activities, but I want you to
11 bear in mind, we're dealing with an idea that was conceived
12 in 2001, okay? It was conceived in 2001, and it didn't come
13 to market until 2014.

14 Why is that important? That is important, ladies
15 and gentlemen, because every two years, as you can see
16 looking at this timeline, there is a new transistor device
17 coming out. So Professor Lee asks for help in 2002, please,
18 Samsung, can you help me? But there are six different
19 generations of devices after Professor Lee asked for help.

20 And why is that important? The evidence has shown
21 that every generation requires new modifications, changes to
22 the device, and, eventually, when you get to the
23 45-nanometer level, something entirely different, this
24 Hafnium oxide layer. That's very, very different than
25 anything contemplated.

1 We also know because we saw Dr. Samavedam, and we
2 also saw Dr. Kim testify that the Defendants spent a lot of
3 money in being able to bring these six different generations
4 of technology to us.

5 Evidence showed that \$400 million was invested to
6 make this -- these products by Samsung. Same thing from
7 GlobalFoundries, \$400 million.

8 So these -- this money is because there are process
9 steps, 2,500 process steps, each time you make one of these
10 new generations of transistors. The evidence has shown us
11 that there are substantial changes that are associated with
12 those.

13 So we've talked a little bit about this Hafnium
14 oxide. This is a very, very important concept because this
15 is the concept that Professor Lee chose not to use in his
16 research device.

17 And you saw the evidence. This is important
18 because in 2003, you had larger devices, and you didn't have
19 problems with leakage. There was no problem with leakage.
20 You could use a single silicon dioxide layer, no problem
21 whatsoever to insulate the gate. That was not a problem.

22 You start moving forward, and we start seeing
23 devices getting smaller and smaller, and the evidence showed
24 us that eventually a new idea needed to be implemented.
25 That was in 2007, and that's something that the Defendants

1 came up with.

2 Now, we never said we were the only one to come up
3 with that. Other -- other companies in the industry came up
4 with that, as well. But the important thing here is this is
5 very, very different than what Professor Lee did. It was
6 also a ground-breaking change.

7 Could we have had -- the 14 -- this is a
8 14-nanometer bulk FinFET device accused of infringement in
9 this case.

10 Could we have had it without Hafnium oxide because
11 it's such a small device?

12 The evidence, no, it's my view, it's not possible
13 at all. Absolutely not.

14 This was -- Dr. Kim provided this testimony.

15 Look what Dr. Kuhn had to say about it. High-k is
16 the holy grail, something that I should translate. And I
17 think you probably picked this up. High-k is the same thing
18 as Hafnium oxide. Hafnium oxide is a category within
19 High-k, so if you see High-k, it's the same thing, okay?
20 It's the holy grail of the business.

21 This is their expert testifying.

22 So in 2007, if this move to Hafnium oxide was
23 groundbreaking and the biggest development in technology in
24 60 years, people would have known about that, right?

25 Yes, sir.

1 That's Dr. Kuhn talking about this transitional
2 change, dramatic change in technology that is in Samsung's
3 technology. And it's not in Professor Lee's.

4 And how do we know that? We also had
5 Dr. Samavedam. You would not be able to build a device
6 without this Hafnium oxide layer.

7 The evidence is clear that this Hafnium oxide layer
8 was necessary for moving down to the 14-nanometer level.

9 So I'm going to pause on this slide because this is
10 important. This is evidence. This is Professor Lee.

11 Now, I want -- I want to set the stage for this.
12 This was not defense counsel tricking Professor Lee. This
13 is on direct examination. And let's look at the question
14 and answer.

15 Why didn't you use and why didn't you and Samsung
16 use the High-k gate oxide layer in your original devices?

17 Remember, these devices are what led to his patent.

18 At the time of my research, we wanted to show that
19 we can create an advanced performance transistor structure
20 without using High-k.

21 That's the evidence. The evidence is Professor Lee
22 did not want to use High-k. The patent that resulted from
23 his research device, it has the concepts from his research.
24 He told us in his testimony that he did not want to use
25 Hafnium oxide or High-k.

1 You want to talk about conflicting stories?
2 Credibility is important, ladies and gentlemen. Credibility
3 is very, very important.

4 This is evidence -- this is very, very important
5 evidence because it tells us that Professor Lee did not want
6 to use High-k in his transistor structure. The accused
7 devices, they all use that. This is very, very important
8 evidence. And we're going to talk about it as we move
9 through -- march through what the evidence showed.

10 We asked Dr. Kuhn, their expert: Hafnium oxide,
11 you don't see it anywhere in the patent.

12 No wonder she didn't see it. Professor Lee didn't
13 want High-k materials or Hafnium oxide. He intentionally
14 designed a transistor to not use it. So that's why we don't
15 see it anywhere in the patent. And we confirmed this with
16 their expert. We wanted to make absolutely sure, you know,
17 we're not missing anything. We wanted to make sure that
18 this High-k or this Hafnium oxide was nowhere to be found.

19 And why is that important? That's important
20 because as I talked about a little bit at the beginning, and
21 nobody has refuted this fact, a patent is like a deed. You
22 use your words to describe in here whatever you are
23 claiming, and you tell the public this is my idea. That's
24 what a patent does.

25 And what you don't do is you don't come over here

1 later and say, oh, hold on, I didn't use those words
2 anywhere in my patent, but my patent actually covers that.

3 Well, we know that Hafnium oxide is not in this
4 patent. We know that the device that led to the patent
5 intentionally was designed not to include what they're now
6 accusing the Defendants of using in their device. That just
7 isn't fair, ladies and gentlemen. It's not fair. They are
8 bound by the words in Professor Lee's patent, and those
9 words were chosen for a very, very good reason.

10 And as a result of this, there is no infringement
11 here. And, remember, if you find that even one element is
12 missing, that -- that means non-infringement. If one
13 element is missing, that means non-infringement. There are
14 three that we focused on. And I'm going to walk you through
15 these three.

16 The red underline in the claim language, that's
17 important. The formed on, that -- that is what we are
18 focusing on is the formed on. So you have to have -- if you
19 look here, you have to have a first oxide layer, which is
20 formed on the upper surface of the Fin region. Okay? So
21 you have this first -- this first -- this first layer here.
22 That must be formed on it. And you must have a gate that is
23 formed on the top right here. This is the gate in green.
24 You have to have the gate formed on the first and on the
25 second oxide layer here, okay?

1 So that is what the patent requires. Why is
2 Hafnium oxide important? Why did we talk about Hafnium
3 oxide so much? We talked about Hafnium oxide. It's the
4 black line here. It's the black line.

5 And what Hafnium oxide does is it creates a
6 separate layer so that you cannot have a first oxide layer
7 formed on the Fin because that would be -- in our structure
8 you can see the SiO₂, the silicon oxide layer.

9 And then the second requirement is the key one
10 here. A gate which is formed on said first and second oxide
11 layer. It can't be the same layer. The gate is formed on
12 the Hafnium dioxide. You can see that right here. The gate
13 is formed on here.

14 And the second oxide layer, you can't have that
15 either because you have the Hafnium oxide.

16 That's what the Hafnium oxide does. The Hafnium
17 oxide is different, and it takes you outside of the scope of
18 the claims when you looked on these crucial formed on claim
19 terms.

20 Now, we also have marked up here for you an actual
21 image of one of our devices, and you'll see exactly what
22 we're talking about. The green would be the gate. We have
23 the blue would be the -- the silicon oxide level -- or the
24 first -- that would be -- could be the first oxide layer,
25 which would be formed on the Fin, but you don't have a gate

1 formed on the first and second oxide layer because the
2 Hafnium oxide layer takes it outside of the scope of the
3 claims.

4 So that is why this has been such a crucial issue
5 in walking through, and that's why we spent a lot of time
6 with fact witnesses and the expert witnesses on this. But,
7 remember, we know that Professor Lee did not want Hafnium
8 oxide in his patent. He's told us that. We saw that
9 testimony.

10 It's important to note that the Hafnium oxide layer
11 is a separate layer. It's formed on different machines and
12 tools. It's formed at different times. This is testimony
13 from Dr. Kuhn telling us this.

14 So we know it's a separate layer, and that's
15 important.

16 Dr. Samavedam told us the same thing. It's a
17 separate layer. And he was asked: Is the Hafnium oxide
18 layer formed on the surface of the Fin?

19 No, it's not.

20 He's telling us that what we have here is a
21 fundamentally different structure. And the reason that it's
22 different is 2007 was a very, very different time period
23 than 2001. Time marches on. This -- this Moore's Law and
24 this change in transistors every two years leads to a very,
25 very different structure when you come to 2007 and 2008 and

1 you flash forward.

2 I want to talk with you just a little bit about
3 this -- two models and why it is that -- you know, I showed
4 Professor Lee the model and talked a little bit about this.

5 So on the left-hand side, we have a model that
6 Professor Lee used before this litigation was filed. It was
7 a picture. I showed it to you during his cross-examination.
8 And you'll note that it says SiO₂ in the single layer there,
9 the blue layer. That's silicon oxide, okay?

10 So as you can see as you look at this testimony on
11 the bottom of the screen here, the model they brought to
12 court here is shown on the right-hand side. And you'll see
13 they had put tape over the SiO₂. There was tape here, and
14 there was tape here. And it says: Oxide.

15 And I asked Professor Lee, that picture was taken
16 before the litigation was filed. That was the one on the
17 left. And then I asked him: And the stickers were applied
18 to the model saying oxide after this litigation was filed;
19 is that correct?

20 And he says, the answer: They were put on when I
21 came here for the jury.

22 So why is this important? It is a literal
23 cover-up. He's trying to cover up the fact that as he was
24 showing the model, which demonstrated his idea to students,
25 and things of that nature, in Korea it had a single layer,

1 silicon oxide. You can see it.

2 But they wanted -- but they knew that we had a
3 Hafnium dioxide layer. So as they're coming here they get
4 tape, and they changed that word to oxide so that they can
5 perhaps try to capture more than what actually was shown
6 originally before this litigation was filed.

7 So that's the first non-infringement position. If
8 you accept that non-infringement position, you can check no
9 with regard to infringement, and that is the end of the
10 inquiry.

11 But there are two more, and I'm going to briefly go
12 through them.

13 The second one, if you recall, had to do with the
14 first oxide layer being formed on the upper surface of the
15 Fin region with a thickness greater or equal to that of the
16 first gate oxide. I just want to raise a couple of points
17 with regard to this non-infringement position.

18 One I believe is very, very important, and that is
19 we brought -- we brought witnesses forward, not just
20 experts, but witnesses who know about the structure of these
21 devices, this is Dr. Samavedam from GlobalFoundries, and
22 they said it's fundamental. The physics of this device
23 means that you're always going to be thinner at the top
24 region than -- than on the sides.

25 Now, why is that important? That's important

1 because we didn't hear anybody refute that evidence. In
2 other words, nobody came forward on the other side and said,
3 hey, hold on, physics is wrong here. I'm going to tell you
4 why that proposition is not correct. We had no refutation,
5 nobody who came forward and told us that the concept of
6 fundamental physics that we heard a couple of witnesses talk
7 about on behalf of the Plaintiff was wrong in some way. And
8 we -- we showed it.

9 It's because we had a low atomic density. We used
10 this with Dr. Wallace. And -- and Dr. Samavedam also talked
11 about it. You have a low atomic density at the upper part
12 of the Fin region, you see that up here. And you have a
13 higher atomic density here on the side. And that's why
14 physics dictates that you're going to be thinner at the top
15 of the Fin region rather than thicker, as the claim
16 requires, as you get to these smaller size devices, the
17 devices that are accused of infringement in this case.

18 There's nothing equivalent to this. It says
19 thicker. We're thinner. That cannot be equivalent. That's
20 substantially different. It's the opposite.

21 All right. So we have a little bit about
22 measurements, and I'm not going to get into that. That was
23 confusing. Dr. Kuhn admitted she did hand measurements.
24 She admitted that she didn't send those measurements out to
25 anybody to have them checked. And she admitted that, in

1 fact, her measurements were different.

2 THE COURT: 10 minutes remaining.

3 MR. JACOBS: Thank you so much, Your Honor.

4 They were different than actual measurements taken
5 internally.

6 And I want to point this out because counsel said
7 during his closing statement, and this is important, he said
8 they were the only one to do measurements. That is not
9 correct. That is -- that is -- that is simply not correct.

10 There were measurements done in GlobalFoundries on
11 these exact TEMs that you're seeing, on these images that
12 you're seeing. And what they did was they came back after
13 the litigation was filed, and they changed the measurements.
14 They did their own measurements, and they came up with
15 different numbers. That's their non-infringement position.
16 They did it by hand. They didn't use a computer, the
17 software that could assist in this.

18 You heard some testimony about a robot, a robotic
19 assistance for that. They didn't do that either. Instead,
20 they did it by hand. They got different numbers.

21 But, again, they did it after litigation was filed.
22 So after -- we have -- we have pre-litigation, corporate
23 documents showing us that were thinner, okay.
24 Non-infringement.

25 After the litigation is filed, they come in, they

1 make some new measurements, they do it by hand which is the
2 least reliable of all the ways to do this. And now all the
3 sudden they say they -- they have -- they have us. They
4 have us on infringement.

5 It's credibility. It's your decision.
6 Pre-litigation, post litigation. I would submit that
7 something that is in corporate records, pre-litigation is
8 much, much more reliable from a measurement perspective than
9 something that is made after a litigation is filed.

10 Third position, and I'm just going to quickly cover
11 this one, it's the -- it's the parabola, it's the
12 wall-shape. And all I want to say here is if you choose
13 wall-shape, everybody admits that wall-shape means a
14 rectangle. Here we have Dr. Kuhn rectilinear. Here we have
15 Dr. Samavedam talking about it, rectangular sections.

16 So what we're looking at here is we're looking for
17 rectangular sections, that's what the testimony shows. And
18 when you look at the accused devices there, this continual,
19 continual curvature, you see it here on the left-hand side,
20 so you see the continual curve, you see the continual curve,
21 and that is like a shark's fin. So we have the shark's fin
22 here, and that's what we're dealing with.

23 We're dealing with -- with ours then, something
24 that is very different than this rectangular wall-shape.

25 They chose to use the word "wall-shape." They

1 use -- when they did that, again, the deed, they're putting
2 it out to the public. We have a wall-shape, and that's what
3 they're telling the public we're entitled to rely upon that.
4 Ours is different. That's the third non-infringement
5 position.

6 Again, any one of those non-infringement positions
7 is enough.

8 Three different positions. We have the formed on.
9 We have the thicker or equal limitation. And we have the
10 wall-shape position. Three different non-infringement.
11 Regardless of the results, here are on the right-hand side,
12 this is a summary of why it is that the Defendants do not
13 infringe.

14 All right. So willfulness, we were working
15 together. We were collaborating together. I have just a
16 couple of points to raise on willfulness because I don't
17 think that willfulness is really going to be hopefully that
18 big of a deal.

19 Egregious conduct is required. And you'll see it
20 in your jury instructions. Egregious, willful, wanton
21 conduct for a finding of -- of willfulness. We were working
22 together, we were working, we were collaborating.

23 But remember this, we didn't copy because we
24 introduced Hafnium oxide into a product. And Professor Lee
25 said that, in fact, he did not use Hafnium oxide in his

1 research idea. So we could not have copied. That -- that
2 should be the end of that.

3 These documents, I showed these to you in opening
4 statement. These are us working together.

5 You saw this evidence. Transferred key technology
6 to Samsung, okay? So you saw all this.

7 And we talked about this a little bit with
8 Professor Lee. This is DX-47. I transferred my technology.
9 This was 2004. That's -- that's not egregious conduct,
10 that's not willful, wanton, malicious conduct. These were
11 companies that were trying to help each other. And
12 eventually, Samsung figuring out this technology just won't
13 work. We -- we need to move on. We need to move in a
14 different direction.

15 We saw Dr. Park, he came in, he testified, and he
16 said we had to make changes.

17 We had the head of -- we had the corporate rep from
18 KAIST IP. Do you know anything about copying?

19 His answer: We are not able to know.

20 Okay. So I'd like to now finish up by talking a
21 little bit. Invalidity, I'm going to leave that to you. We
22 showed that yesterday. It should be fresh in your mind.

23 We mapped out Mizuno. There were some accusations
24 in the beginning about Mizuno being at the Patent Office.

25 THE COURT: Five minutes remaining.

1 MR. JACOBS: Thank you, Your Honor.

2 Mizuno was not at the Patent Office as an
3 anticipatory reference. In other words, there was not a
4 one-to-one measure at the Patent Office between Mizuno and
5 the '055 patent. It was one of many references that were
6 mentioned in combinations. So that's -- that was not a fair
7 statement by the Plaintiff when they made that accusation,
8 not a fair statement at all.

9 I'll read the testimony yesterday. This was
10 from -- this was from our expert witness yesterday. He
11 mapped everything out, and he showed this patent was, in
12 fact, invalid.

13 So there's no damages if there's no infringement.
14 That's point number one on damages. No damages if there's
15 no infringement.

16 Here, there's no infringement. There's no damages.

17 But if you look at damages -- first of all, we have
18 Dr. Kuhn telling us that a product would have no value if it
19 was nonfunctional and that this product without Hafnium
20 oxide would not work, okay? Without Hafnium oxide, this
21 product wouldn't work. It would have no value.

22 But we do have two very, very important licenses
23 that you can look at. \$6.8 million was the Intel license.
24 That would have been used in a negotiation, right? That
25 would have been used in a negotiation.

1 And then at the bottom was the IBM license that
2 Dr. Becker talked about, \$3 million, and that was for a
3 series of patents, okay? So they could have purchased
4 FinFET technology for \$3 million. That's what the
5 Defendants could have done. And that's what this shows us.
6 This is from IBM, right here on the right-hand side.

7 But I would submit that when you look at this
8 evidence, the most important thing to look at is the Intel
9 license. It's the same -- it would have been the same
10 party. It would have been beginning of coming into the
11 market. Intel was huge when they took this license. They
12 were the biggest company by far in the industry. And here,
13 this is their expert witness: Was 6.8 market value?

14 Yes, 6.8 at that time was market value.

15 Of course, companies negotiating would have known
16 that, and they would have -- they would have fought hard.

17 If you look at damages, this Intel license is by
18 far the most critical and important piece of evidence to
19 look at.

20 And here's the Intel license on the left-hand side.
21 That's what Dr. Becker used as he walked you through his
22 damages. And on the right-hand side is a crystal ball where
23 you just throw anything in there, and you're just coming up
24 with a number. That is not appropriate. That is not
25 satisfying evidentiary standards.

1 The Intel license is a ceiling here, but Intel was
2 bigger. So to the extent you consider damages, you should
3 drive down from the Intel license. They would have been
4 aware of that, and they would have used it to negotiate in
5 the beginning of those negotiations.

6 If you look at the impact of using a crystal ball
7 versus using the Intel license, you see that's how you get
8 to the large, large damage request that was here. But the
9 first factor that you're looking at -- you have it in your
10 jury instructions -- is comparable licenses.

11 The Intel license is a comparable license. It was
12 between parties, same patent, big, big semiconductor
13 company, \$6.8 million.

14 So I would submit that's very, very important for
15 your consideration.

16 So, ladies and gentlemen, at the end of the day,
17 I'd like to finish up with a statement or two. Woody
18 Guthrie once said: All my words, if not well put nor well
19 taken, are well meant.

20 On behalf of all of the Defendants, we've tried to
21 be respectful, to respect the process throughout, and we
22 hope that that has transferred to you, and you have seen
23 that.

24 In the end of the day, follow the evidence. The
25 evidence will lead you to the right conclusion. Here on the

1 screen is the statement that at the time of my research, we
2 wanted to show we could create an advanced performance
3 transistor without using Hafnium oxide.

4 Could I have the ELMO real quick?

5 So this is the verdict form. This is Question 1.
6 It says: Do -- did KAIST IP prove by a preponderance of the
7 evidence that any Defendant named below infringed any of the
8 asserted claims? Answer: Yes or no. And it lists the
9 three Defendants. If you check no for each one of these
10 Defendants, you are done, ladies and gentlemen. And I would
11 submit that that is what the evidence has shown. They did
12 not use Hafnium oxide. We do. It was an intentional
13 decision on their part.

14 Ladies and gentlemen, thank you so much for your
15 time and attention. We look forward to receiving your
16 verdict. And we really do appreciate all the assistance and
17 attention you've given us during the week. Thank you.

18 THE COURT: All right. Plaintiff may now present
19 its final closing argument. You have 6 minutes and 15
20 seconds left, Mr. Sheasby.

21 MR. SHEASBY: May I have the ELMO, please?

22 What Defendants have said is that you need to focus
23 on the claims, nothing beyond the claims. And if you look
24 at the claims, you'll see that the claims make no reference
25 whatsoever to any specific type of oxide. You can have any

1 type of gate oxide. You can have any type of second oxide.
2 You can have any type of first oxide. This is just common
3 sense.

4 The reason why Professor Lee didn't experiment with
5 Hafnium is because he wanted to make a device that would
6 work with any dioxide layer. That was his goal. The
7 structure could be used with any device. And his claims
8 that the Patent Office gave him, his property says it
9 doesn't matter what type of oxide you use, you infringe.

10 Let's go to Slide 39.

11 Defendants' own expert admitted that the
12 combination of Hafnium and silicon dioxide is a gate oxide.
13 The claim says: Gate oxide.

14 Defendants admit Hafnium plus silicon dioxide meet
15 the claims. It's our property. They can't take it. The
16 Patent Office said: We cover any type of gate oxide. And
17 there's not a word that they can say that can change what
18 the experts and the Patent Office did.

19 Woody Guthrie was right. We're bound by words.
20 And the words we're bound by are the words in the claims.

21 Let's go back to the claims just briefly. I mean,
22 to the ELMO just briefly.

23 You also heard a complete and utter misdirection by
24 Plaintiff (sic). They're talking about the gate not being
25 on the -- on the oxide. Their expert admitted that that

1 wasn't infringement. He spent many -- that was not a basis
2 for non-infringement.

3 He spent many, many minutes talking about that, but
4 what it says is it only says formed on. It doesn't say
5 formed directly on.

6 And Professor Kelin Kuhn said that there was -- it
7 is not appropriate to add the word "directly" there. When
8 you go back to the jury room, ask yourself whether the word
9 "directly" is on those claims. Bound by words. The words
10 of the claim.

11 Your Honor, can you let me know when I have one
12 minute left, please?

13 THE COURT: I will.

14 MR. SHEASBY: Let's now go to -- and so when
15 Professor Lee showed you the model, when he said the side
16 was oxide, he said: I did it for the jury. And you know
17 why he did it? He did it because the claims apply to any
18 oxide. They don't just apply to silicon dioxide. And he
19 wanted to teach you the right way because he was concerned
20 that the Defendants were going to try to trick you and say
21 that these claims were only limited to silicon dioxide.

22 Let's go to Slide 67.

23 So Georgia-Pacific factors. The Judge read in all
24 15 factors. Mr. Becker was -- was a really nice person, but
25 did you notice something? Counsel only asked him about two

1 factors, only the first two factors. He didn't do an
2 analysis of every other factor. And the reason why that's
3 so important is because he ignored two things.

4 On Factor 2, he ignored that GlobalFoundries paid
5 \$588 million to have access to this technology. And he said
6 nothing about the benefits of the patent. It's not that
7 Mr. Becker is a nice man. He just didn't ask the right
8 questions.

9 Let's go to Slide 71.

10 So Samsung and Defendants say they didn't take
11 Hafnium oxide from Professor Lee. That's right, they took
12 it from -- actually from Dr. Kuhn, because Dr. Kuhn, if you
13 heard her testimony, was the person who invented High-k
14 Hafnium dioxide in FinFET transistors.

15 Now, what we have done is we have acknowledged that
16 there's other things that exist in these transistors. And
17 it's for that exact reason that we know all the benefits
18 from the '055 transistor. We calculated them exactly.
19 We've given 88 percent to the Defendants. That covers their
20 Hafnium dioxide. That covers whatever investments they
21 made. And we only get 12 percent.

22 This idea that we're not taking into account
23 Hafnium oxide is a giant misdirection. Of course, we are.
24 We're giving them 88 percent of all the benefits that were
25 achieved by the '055 patent. 88 percent go to them, and 12

1 percent go to us.

2 Can I have Slide 69?

3 So I told you guys that I spent my whole life in
4 California. And there's this great basketball player in
5 California named Steph Curry. And when Steph Curry first
6 joined the NBA, he was really thin, and people didn't think
7 he was actually going to be that good of a player. His
8 rookie contract with Golden State was incredibly low. Golden
9 State got this incredible deal, but his next contract, when
10 people knew how amazing he was, was incredibly large.

11 Intel, the American company, who did the -- who
12 followed the law -- Intel, the American company --

13 THE COURT: One minute left.

14 MR. SHEASBY: -- who took a license to this patent
15 voluntarily, got an incredible deal. No one disputes that.
16 These multi-national companies that are the biggest in the
17 world, they don't get a rookie deal. Rookie deals were in
18 2011. Today, they get what is due.

19 Ladies and gentlemen of the jury, this case,
20 Professor Lee, a labor of a lifetime. Professor Kuhn's
21 analysis. This is in your hands. Thank you.

22 THE COURT: All right. Ladies and gentlemen, I
23 have a few final instructions to give you before you begin
24 your deliberations.

25 You must perform your duties as jurors without bias

1 or prejudice as to any party. The law does not permit you
2 to be controlled by sympathy, prejudice, or public opinion.
3 All parties expect that you will carefully and impartially
4 consider all the evidence, follow the law as I have given it
5 to you, and reach a just verdict regardless of the
6 consequences.

7 Answer each question in the verdict form from the
8 facts as you find them to be. Follow the instructions that
9 I have given you. Do not decide -- as I've said before, do
10 not decide who you think should win and then answer the
11 questions accordingly. Your answers and your verdict in
12 this case must be unanimous.

13 You should consider and decide this case as a
14 dispute between persons of equal standing in the community
15 of equal worth and holding the same or similar stations in
16 life.

17 This is true in patent cases between corporations,
18 partnerships, or individuals. A patent owner is entitled to
19 protect his rights under the laws of the United States.
20 This includes bringing a suit in a United States District
21 Court for money damages for infringement. The law
22 recognizes no distinction among types of parties. All
23 corporations, partnerships, other organizations, and
24 individuals stand equal before the law, regardless of their
25 size, regardless of who owns them, and they are to be

1 treated as equals.

2 When you retire to the jury room to deliberate on
3 your verdict, you're each going to have a copy of these
4 written -- a written copy of these instructions that I'm
5 giving you. If you desire to see any of the exhibits which
6 the Court has admitted into evidence during the course of
7 the trial, you should advise me by a written note delivered
8 to the Court Security Officer, and I will then send that
9 exhibit or those exhibits to you.

10 Once you retire, you should first select your
11 foreperson and then conduct your deliberations. If you
12 recess during your deliberations, follow all the
13 instructions the Court has given you about your conduct
14 during the trial.

15 After you've reached your verdict, your foreperson
16 is to fill in the verdict form which reflects your unanimous
17 answers to the questions. Do not reveal your answers until
18 such time as you are discharged unless otherwise directed by
19 me. And you must never disclose to anyone, not even to me,
20 your numerical division on any question.

21 Any notes that you've taken over the course of the
22 trial are aids to your memory only. If your memory should
23 differ from your notes, rely on your memory and not your
24 notes. The notes are not evidence. A juror who has not
25 taken notes should rely on his or her own independent

1 recollection of the evidence and should not be unduly
2 influenced by the notes of other jurors. Notes are not
3 entitled to any greater weight than the recollection or
4 impression of each juror about the testimony.

5 If during your deliberations you want to
6 communicate with me at any time, you should give a written
7 message or question to the Court Security Officer who will
8 then bring it to me. I'll respond as promptly as possible
9 either in writing or by having you brought back into the
10 courtroom where I can address you orally. I will always
11 first disclose to the attorneys in the case your question
12 and my response before I answer any question.

13 After you've reached a verdict and I have
14 discharged you from your positions as jurors, you are not
15 required to talk to anyone about your service in this case
16 unless the Court orders otherwise. And by the same token,
17 at that time, after you've returned a verdict and I've
18 discharged you, you're free to discuss your service in this
19 case with anyone if you choose to. That decision at that
20 time will be yours and yours alone.

21 I'll now hand a clean copy of the verdict form and
22 eight copies of these written -- of these final jury
23 instructions to the Court Security Officer to deliver to you
24 in the court -- in the jury room.

25 Ladies and gentlemen of the jury, you may now

1 retire to the jury room to deliberate. We await your
2 verdict.

3 COURT SECURITY OFFICER: All rise for the jury.

4 (Jury out.)

5 THE COURT: Counsel, while the jury is
6 deliberating, you are welcome to wait here in the courtroom.
7 You are welcome to leave a representative here and wait
8 elsewhere. You're welcome to wait elsewhere. If you choose
9 to be somewhere else, I would ask that you stay close to the
10 area so that we can call you if we receive a question or a
11 verdict.

12 If you elect to not leave anyone here or to
13 completely be elsewhere, make sure that my staff has a good
14 working cell phone number where a member of each trial team
15 can be contacted so that we can bring you back in the event
16 we receive a note from the jury or a return of a verdict.

17 With those instructions, awaiting either a note
18 from the jury or the return of the verdict, the Court stands
19 in recess.

20 (Recess.)

21 (Jury out.)

22 COURT SECURITY OFFICER: All rise.

23 THE COURT: Be seated, please.

24 Counsel, we have received the following note from
25 the jury. I'll read it for the record. It starts at the

1 top.

2 Evidence needed.

3 And below that it says: Dr. Kuhn's direct
4 examination slides;

5 Professor Lee's deposition;

6 DX-526 Intel license agreement;

7 PX-1322.

8 And then it is signed by Juror No. 4, Ms. Mobley,
9 and dated with today's date.

10 We'll assume that she is the foreperson of the
11 jury, and I'm going to put a one in the upper right-hand
12 corner of the document for identification, and I'll hand it
13 to the courtroom deputy.

14 Also, counsel, in light of the note, I've drafted a
15 response subject to any comments that you may want to offer.
16 If somebody's from both sides will approach, I've got two
17 copies for each side to look at.

18 My proposed response to the jury is as follows:

19 Members of the jury, in response to your note, I am
20 sending you the following exhibits: DX-526 and PX-1322 as
21 you requested.

22 With regard to Dr. Kuhn's direct examination slides
23 and Professor Lee's deposition, these were presented as
24 demonstratives only and were not introduced as exhibits in
25 the trial. Consequently, they are not evidence, and I

1 cannot send them to you. However, the testimony of the
2 witnesses about these demonstratives is evidence, and you
3 should consider and focus on your memory of that testimony
4 in this regard.

5 Is there any objection to this response from
6 Plaintiff?

7 MR. SHEASBY: No objection from the Plaintiff, Your
8 Honor.

9 THE COURT: Any objection from the Defendants?

10 MS. SMITH: No, Your Honor.

11 THE COURT: Then I'll execute the original of this
12 response, and I'll hand it to the Court Security Officer
13 along with the two exhibits and direct him to deliver these
14 to the jury in the jury room.

15 Awaiting either another note from the jury or the
16 return of a verdict, counsel, we stand in recess.

17 COURT SECURITY OFFICER: All rise.

18 (Recess.)

19 (Jury out.)

20 COURT SECURITY OFFICER: All rise.

21 THE COURT: Be seated, please.

22 Counsel, we've received a second note from the
23 jury. I'll read it to you and read it into the record.

24 It says: Judge Gilstrap, the following evidence is
25 being requested.

1 And there are eight items listed one at a time
2 below that. They are:

3 Toshiba Mizuno patent;

4 Toshiba Hieda patent;

5 Toshiba Inaba patent;

6 PX-0671;

7 DX-336;

8 IBM patent;

9 PX-0843;

10 PX-0853.

11 As with the first note, it is signed by Taylor
12 Mobberly -- Mobley, as the jury foreperson, and it's dated
13 with today's date.

14 I will mark this note as Item 2 in the upper
15 right-hand corner and hand it to the courtroom deputy to be
16 included in the papers of this cause.

17 I understand that the courtroom deputy has already
18 in advanced met with counsel in regard to these requested
19 items. And my understanding from that interaction is that
20 the, quote, IBM patent, close quote, is not in evidence, nor
21 is DX-336, but the other items are, and the various Toshiba
22 patents requested have been identified with appropriate
23 exhibit numbers.

24 Consequently, I have prepared a proposed response
25 to the parties. Each side may approach. I have two copies

1 of this response for each side.

2 This -- the Court's proposed response to Jury Note
3 No. 2 is as follows:

4 Members of the jury, in response to your second
5 note, please find the following exhibits which you
6 requested:

7 PX-0671;

8 PX-0843;

9 PX-0853;

10 DX-272;

11 DX-277;

12 And DX-279.

13 The, quote, IBM patent, close quote, which you
14 requested was not an exhibit admitted into evidence, and
15 neither was DX-336. Consequently, I cannot send these to
16 you. Accordingly, you should focus on your memory of the
17 testimony that was given in regard to the IBM patent and
18 DX-336.

19 Is there any objection to this proposed response
20 from the Court to the jury's second note from the Plaintiff?

21 MR. BUNT: No, Your Honor.

22 THE COURT: Is there objection from the Defendants?

23 MS. SMITH: No, Your Honor.

24 THE COURT: And without objection, I'll sign the
25 note.

1 The courtroom deputy will hand me the exhibits.
2 I'll hand the signed note with the exhibits to the Court
3 Security Officer and direct that he deliver the same to the
4 jury in the jury room.

5 Again, counsel, awaiting either another note or the
6 return of a verdict, we stand in recess.

7 COURT SECURITY OFFICER: All rise.

8 (Recess.)

9 (Jury out.)

10 COURT SECURITY OFFICER: All rise.

11 THE COURT: Be seated, please.

12 Counsel, we have received a third note from the
13 jury. I'll read it for the record, and then I'll hand it to
14 the courtroom deputy.

15 It simply says as follows: Judge Gilstrap, may we
16 request Dr. Kuhn's FinFET model?

17 Signed Taylor Mobley, 6/15/18.

18 I'll mark it as Note 3 and hand it to the courtroom
19 deputy.

20 I have prepared a proposed response in light of
21 that request, and I have two copies for each side, if you
22 want to approach.

23 I'll read it and then see if there are any
24 objections from either side.

25 Response to Jury Note No. 3: Members of the jury,

1 in response to your third note, Dr. Kuhn's FinFET model was
2 presented as a demonstrative only and was not introduced as
3 an exhibit in the trial. Consequently, it is not evidence,
4 and I cannot send it to you.

5 However, the testimony of the witnesses about this
6 demonstrative is evidence, and you should consider and focus
7 on your memory of that testimony in this regard.

8 Are there objections from Plaintiff to this
9 response to the jury's third note?

10 MR. BUNT: No, Your Honor.

11 THE COURT: Are there objections from Defendants?

12 MS. SMITH: No, Your Honor.

13 THE COURT: Then I'll sign the note and deliver it
14 to the Court Security Officer and direct him to deliver it
15 to the jury.

16 And barring another note or the return of a
17 verdict, we stand in recess.

18 COURT SECURITY OFFICER: All rise.

19 (Recess.)

20 (Jury out.)

21 COURT SECURITY OFFICER: All rise.

22 THE COURT: Be seated, please.

23 The Court's received another note from the jury.
24 I'll read the note. And I have prepared a suggested
25 response. I'll then read that and take comments from

1 counsel.

2 I'll mark this as Note No. 4 in the upper
3 right-hand corner, and after I've read it, I'll deliver the
4 original note to the courtroom jury.

5 Judge Gilstrap, may we reward a lump sum plus
6 royalty payment for future sales?

7 Signed Taylor Mobley -- Mobley, foreperson.

8 I'll hand it to the courtroom deputy.

9 I'll read you, counsel, what I've prepared as a
10 tentative response, and then I'll take any comments from the
11 parties that you care to offer.

12 I have two proposed copies for each side if you
13 want to approach and look at it as I read it.

14 The Court's proposed response to Juror Note
15 No. 4 -- Jury Note No. 4 is as follows: Members of the
16 jury, as the Court instructed you in its final jury
17 instructions, see Pages 22 and 23, if you find KAIST is
18 entitled to damages, you must decide whether the parties
19 would have agreed to a running royalty or a fully paid-up
20 lump sum at the time of the hypothetical negotiation.

21 As a result, if you award monetary damages, they
22 must be designated as either a lump sum or a running
23 royalty. You may not award both.

24 Are there objections to this proposed response from
25 Plaintiff or Defendant?

1 MR. SHEASBY: Your Honor, I must confess that I --
2 I do think I have an objection.

3 THE COURT: Well, once you make up your mind, why
4 don't you tell me?

5 MR. SHEASBY: I have an objection, and my concern
6 is -- and I've just had five seconds to think about this,
7 but I think under the law, the answer is the jury can award
8 whatever they want.

9 There certainly was evidence in the record for
10 future -- counsel talked about paid-up through the life,
11 and they put that into the record, and so I do believe that
12 the appropriate answer is that you can award whatever you
13 want.

14 THE COURT: Well, we have a verdict form that they
15 have in their hands that clearly provides on the question
16 about damages an amount of money or a blank for an amount of
17 money. Underneath it, it says, indicate whether this is a
18 lump sum or a running royalty. And per the structure of the
19 verdict form, they're put to an election.

20 And neither the Plaintiff nor the Defendants
21 objected to that structure at the time of the charge
22 conference. I'm trying to respond in a way that's
23 consistent with both the instructions I've given them and
24 the verdict form that they are trying to answer.

25 MR. SHEASBY: Your Honor --

1 THE COURT: But that's the rationale for the
2 response that I've read, Mr. Sheasby.

3 MR. SHEASBY: Your Honor, I would think we would
4 request that -- the problem is I don't know -- here's my
5 concern. They could be saying, can we award Samsung a lump
6 sum, GlobalFoundries a running royalty, or Qualcomm a lump
7 sum? In other words, my request is that we continue -- that
8 the response be that you are entitled to be awarded to
9 damages that are due under the statute. I do think that is
10 the appropriate response. Because the way it's written
11 right now is --

12 THE COURT: Please make sure I can hear you clearly
13 as you talk.

14 MR. SHEASBY: I'm sorry. The way it's written
15 right now, it seems to be suggesting that they can award --
16 they have to do it the same for everyone. And so I would
17 just urge that we give a neutral response saying you can
18 award the reasonable royalty that are due under the license.

19 I do think there are facts in the record of a
20 running royalty because Mr. Becker talked about it. There
21 are facts in the record for liability through the lifetime
22 of the patent. I know their intention of talking about lump
23 sum was to get a verdict that would exhaust future
24 14-nanometer sales. So when I balance everything, I do
25 believe the correct response would be to say you can award

1 what you believe is reasonable.

2 THE COURT: All right. Let me hear from the
3 Defendants.

4 MR. KINNAIRD: Well, Your Honor, I think as far as
5 counsel's point about confusion between the parties, I
6 don't think there's any confusion possible with the verdict
7 form.

8 I think this would create a real possibility of a
9 double recovery if you -- if the jury is going to award both
10 lump sum and royalty, and I think the opposing party had the
11 opportunity to object to either the jury instructions or the
12 verdict form and did not.

13 THE COURT: What's the Defendants' reaction
14 specifically to the proposed response that I've read? Do you
15 have problems or suggested changes with it?

16 MR. KINNAIRD: Yes, we're fine with it, Your Honor.

17 MR. SHEASBY: Your Honor, if you're going to rule
18 against me, may I make an alternative suggestion as to how
19 to clarify?

20 THE COURT: If you have an alternative, I'll be
21 happy to hear it. I would ask that you go to the podium so
22 that --

23 MR. SHEASBY: Yes, Your Honor.

24 THE COURT: -- you're clear.

25 MR. SHEASBY: And it's disrespectful of me, and I

1 apologize.

2 THE COURT: It's not disrespectful. I just want to
3 make sure that both the Court and the court reporter hear
4 what you say.

5 MR. SHEASBY: For any one Defendant, you should
6 choose between -- you would choose either a lump sum or a
7 running royalty. But for different Defendants, one
8 Defendant can receive a lump sum, one Defendant can receive
9 a reasonable royalty. That's the only request I'm making.
10 I don't want them to feel compelled to give a lump sum to
11 all three or compelled to give a reasonable royalty to all
12 three.

13 THE COURT: Well, that's why when -- to be candid
14 with you, Mr. Sheasby, that's why when the Court drafted the
15 verdict form, rather than putting three blanks with dollar
16 signs in that particular question and then underneath saying
17 is this a running royalty or a lump sum, I specifically and
18 intentionally put the choice and the designation of either a
19 lump sum or a running royalty underneath each group of
20 Defendants and each dollar sign that would be filled in. So
21 by the form of the verdict itself, they should clearly know
22 that they're not compelled to do it all one way or the
23 other.

24 MR. SHEASBY: Your Honor, I believe that the note
25 that I read suggested that they may be asking the question

1 about whether they can give different amounts to each -- to
2 different Defendants. And I believe -- respectfully that
3 that would be an appropriate clarification to give them, if
4 my interpretation of their note is appropriate -- is
5 correct.

6 THE COURT: Well, I'm not sure I agree with your
7 interpretation. We have the note that we have. It says
8 what it says. And the jury's been out four hours now, and I
9 think it's important that I get them some kind of a prompt
10 response.

11 MR. SHEASBY: I understand.

12 THE COURT: I'm going to sign the response that
13 I've read and that you've commented on. To the extent the
14 Plaintiffs have an objection, I'll overrule it, and I'll
15 direct the Court Security Officer to deliver this response
16 to the jury.

17 MR. SHEASBY: Thank you, Your Honor.

18 THE COURT: And pending either another note or the
19 return of a verdict, the Court stands in recess.

20 COURT SECURITY OFFICER: All rise.

21 (Recess.)

22 (Jury out.)

23 COURT SECURITY OFFICER: All rise.

24 THE COURT: Be seated, please.

25 Counsel, I've received the following note from the

1 jury:

2 Judge Gilstrap, we have reached a verdict.

3 Signed by Taylor Mobley, as jury foreperson, and
4 dated today's date. I'll hand this note to the courtroom
5 deputy.

6 I'm about to bring in the jury and receive the
7 verdict. This goes without saying, but I expect an unbroken
8 continuation of appropriate decorum no matter what the
9 results are.

10 All right. Let's bring in the jury, Mr. McAteer.

11 COURT SECURITY OFFICER: Yes, sir.

12 All rise for the jury.

13 (Jury in.)

14 Be seated, please.

15 Ms. Mobley, I understand you are the foreperson of
16 the jury; is that correct?

17 THE FOREPERSON: Yes, Your Honor.

18 THE COURT: Has the jury reached a verdict?

19 THE FOREPERSON: Yes, we have.

20 THE COURT: Would you hand the completed verdict
21 form to the Court Security Officer who will bring it to me?

22 Ladies and gentlemen of the jury, I'm going to
23 announce the verdict at this time. And I'd like to ask each
24 of the members of the jury to listen very carefully because
25 after I have announced the verdict, I'm going to ask each

1 one of you if this is your verdict so that we can confirm on
2 the record that it is the unanimous verdict of all eight
3 members of the jury.

4 Turning to the verdict form, beginning on Page 3,
5 wherein Question 1 is located: Did KAIST prove by a
6 preponderance of the evidence that any Defendant named below
7 infringed any of the asserted claims?

8 Answers are for the Samsung Defendants, yes.

9 For the GlobalFoundries Defendants, yes.

10 For the Qualcomm, yes.

11 Question 2, which is located on Page 4 of the
12 verdict form: Did the Defendants prove by clear and
13 convincing evidence that any of the following asserted
14 claims of the '055 patent are invalid?

15 The answer for all of the claims, Claims 1, 2, 3,
16 4, 5, 6, 11, 12, 13, 15, 16, and 17, the answer for each of
17 those is no.

18 Turning next to Question 3 of the verdict form
19 located on Page 6: Did KAIST prove by a preponderance of
20 the evidence that the infringement you found in Question 1
21 was willful as to any of the Defendants listed below?

22 The answers are for the Samsung Defendants, yes.

23 The GlobalFoundries Defendants, no.

24 Qualcomm, no.

25 Turning to Question 4 on Page 8 of the verdict

1 form: What sum of money, if any, if paid now cash do you
2 find by a preponderance of the evidence would fairly and
3 reasonably compensate KAIST for any infringement by a
4 Defendant who you have found to be infringing? Only award
5 damages for those asserted claims that you have found to be
6 both infringed by a Defendant and not invalid as to each
7 Defendant listed below. Answer in dollars and cents.

8 The answers are for the Samsung Defendants,
9 \$400 million. That award is indicated to be a lump sum
10 award.

11 For the GlobalFoundries Defendants, the answer is
12 zero.

13 For Qualcomm, the answer is zero.

14 The final page, being the 9th page of the verdict
15 form, is dated with today's date, and it is signed by
16 Ms. Mobley, as the foreperson of the jury.

17 Ladies and gentlemen of the jury, let me poll you
18 and make sure that this is, in fact, the unanimous verdict
19 of all eight members of our jury. If this is your verdict
20 as I have read it, would you please stand?

21 (Jury polled.)

22 THE COURT: Thank you very much. You may be
23 seated.

24 Let the record reflect that all eight members of
25 the jury immediately rose and stood in response to the

1 Court's question to poll the jury. And the Court does find
2 that this is the unanimous verdict of all eight members of
3 the jury.

4 I'll hand the original verdict form to the
5 courtroom deputy. The Court accepts the verdict as rendered
6 by the jury.

7 Ladies and gentlemen, this now completes the trial
8 of this case. From the very beginning, when you showed up
9 here on Monday, I have instructed you repeatedly about not
10 to discuss anything about this case with anyone, including
11 each other until such time as you retired to deliberate on
12 your verdict.

13 I'm -- I'm releasing you from that obligation and
14 all the other obligations imposed on you as members of this
15 jury. That means you're now free to talk about this case
16 and your experience as jurors in any way that you would like
17 to. That also means that you're absolutely under no
18 obligation whatsoever to talk with anyone about this case or
19 your experiences as a juror.

20 I want you to understand the practice and custom in
21 the Marshall Division of the Eastern District of Texas. It
22 has been this way since I got out of law school a very long
23 time ago. The practice is that when a jury such as
24 yourselves returns a verdict in this court and they're
25 discharged, they are free to initiate a conversation with

1 anyone they would like to about their service.

2 No one outside the members of the jury is allowed
3 to initiate a conversation with you about your service as
4 jurors. And I can promise you because I did it for many
5 years, a good number, if not all of these lawyers, are
6 probably going to position themselves on the front steps of
7 this building so that when you get ready to leave, you'll
8 have an ample opportunity to stop and talk with them if you
9 want to.

10 They are not going to initiate a conversation with
11 you. They are not going to hinder you in any way. They are
12 not going to block you or get in front of you. They are
13 simply going to be available.

14 If you want to talk, stop and talk. I promise you
15 they want to listen. If you don't want to talk, simply
16 smile and walk right on by. You're under no obligation.
17 The decision is yours and yours alone. But I want you to
18 understand that's the way it works.

19 Also, ladies and gentlemen, on behalf of the Court,
20 I want you to know how much I appreciate your service in
21 this case. This has been a difficult case. And you have
22 paid as close of attention to the evidence as any jury I can
23 remember in my almost seven years on the bench in this
24 court. You've taken a big sacrifice to be away from your
25 homes and your families and your work, and that is important

1 public service. And it is worthy of recognition and
2 gratitude and appreciation.

3 This -- this Court, as an institution of our
4 national government provided for in Article III of the
5 Constitution could not function -- could not function
6 without ordinary citizens such as yourself being willing to
7 make the sacrifice that you've made in serving as jurors in
8 a case like this.

9 Everyone associated with the Court, and I speak for
10 the lawyers as officers of the Court and the parties,
11 appreciate your service in this case.

12 And in that regard, I'd like to ask a personal
13 favor of you. It's been my practice since I've been on the
14 bench when a jury has returned a verdict and I've accepted
15 it and discharged them, rather than them immediately
16 exiting the building, I'd like to ask you as a personal
17 favor to take just a couple minutes, go back in the jury
18 room, and let me come in. I'd like to shake each one of
19 your hands, I'd like to look you in the eye and thank you
20 personally for the service that you've rendered as a part of
21 this jury. I think what you've done warrants that.

22 And it would be a personal privilege on my part if
23 you'd allow me to do that. You are not be obligated to do
24 that. You are discharged, and you can leave, but if you
25 would give me just a few minutes -- I know it's -- I know

1 it's in the late afternoon on a Friday before father's day
2 weekend. I promise I won't keep you. But I would like that
3 privilege if you'd be willing to extend that to me.

4 That completes your service as jurors in this case.
5 You are discharged from your position as jurors. And if you
6 will give me just a couple minutes, I will meet you in the
7 courtroom (sic), ladies and gentlemen.

8 The jury is excused.

9 COURT SECURITY OFFICER: All rise.

10 (Jury out.)

11 THE COURT: Counsel, that completes the trial of
12 this case. The Court accepts the verdict as rendered by the
13 jury. You are excused.

14 (Court adjourned.)
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CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and correct transcript from the stenographic notes of the proceedings in the above-entitled matter to the best of my ability.

/S/ Shelly Holmes
SHELLY HOLMES, CSR, TCRR
OFFICIAL REPORTER
State of Texas No.: 7804
Expiration Date: 12/31/18

6/15/18
Date